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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1953

A

No. 57

GEORGE LEWIS DICKINSON, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 4, 1953
CERTIORARI GRANTED JUNE 15, 1953

No. 13165

United States
Court of Appeals
for the Ninth Circuit.

GEORGE LEWIS DICKINSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Northern District of California, Southern Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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[Clerk's Note: When document likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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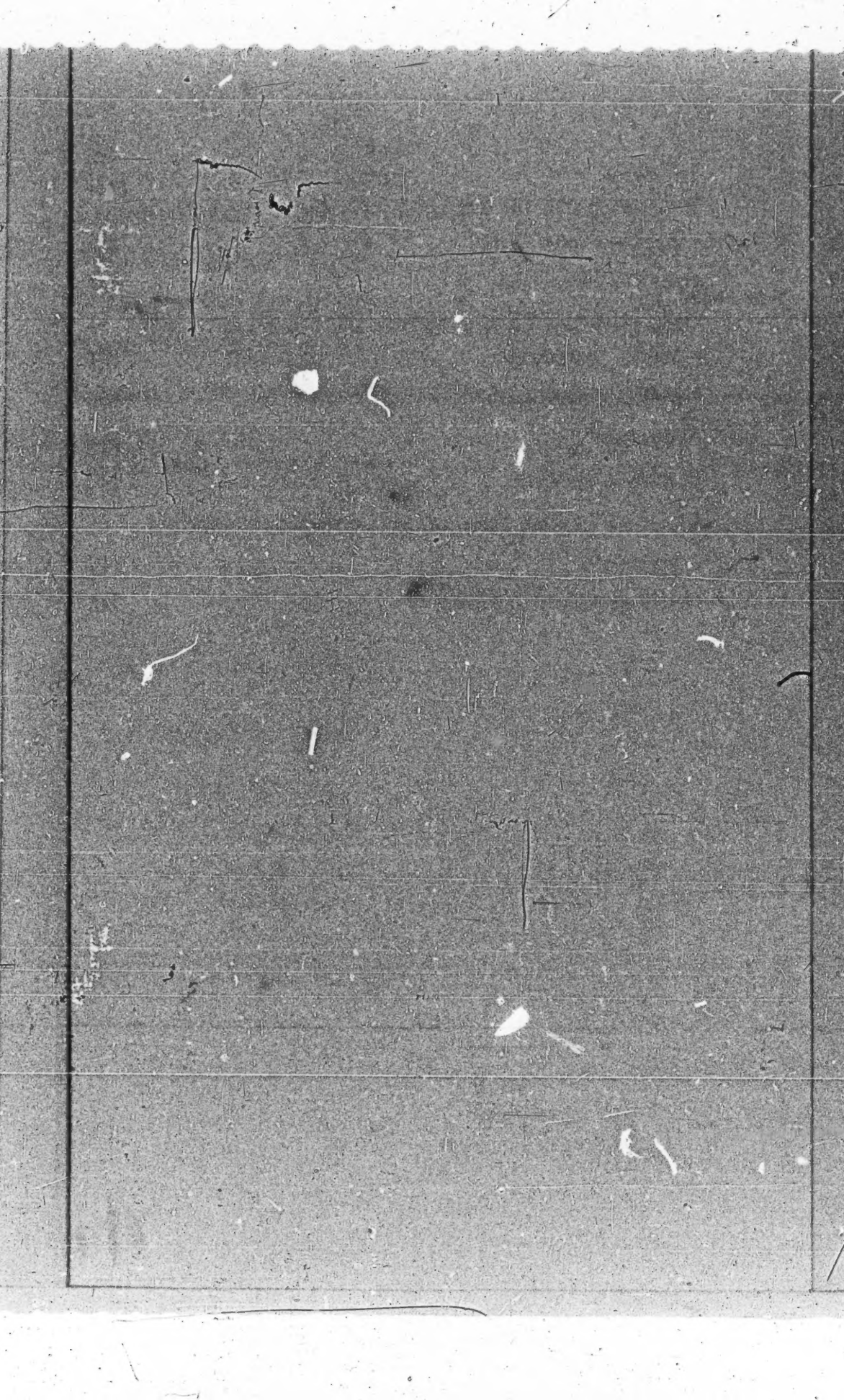

NAMES AND ADDRESSES OF ATTORNEYS

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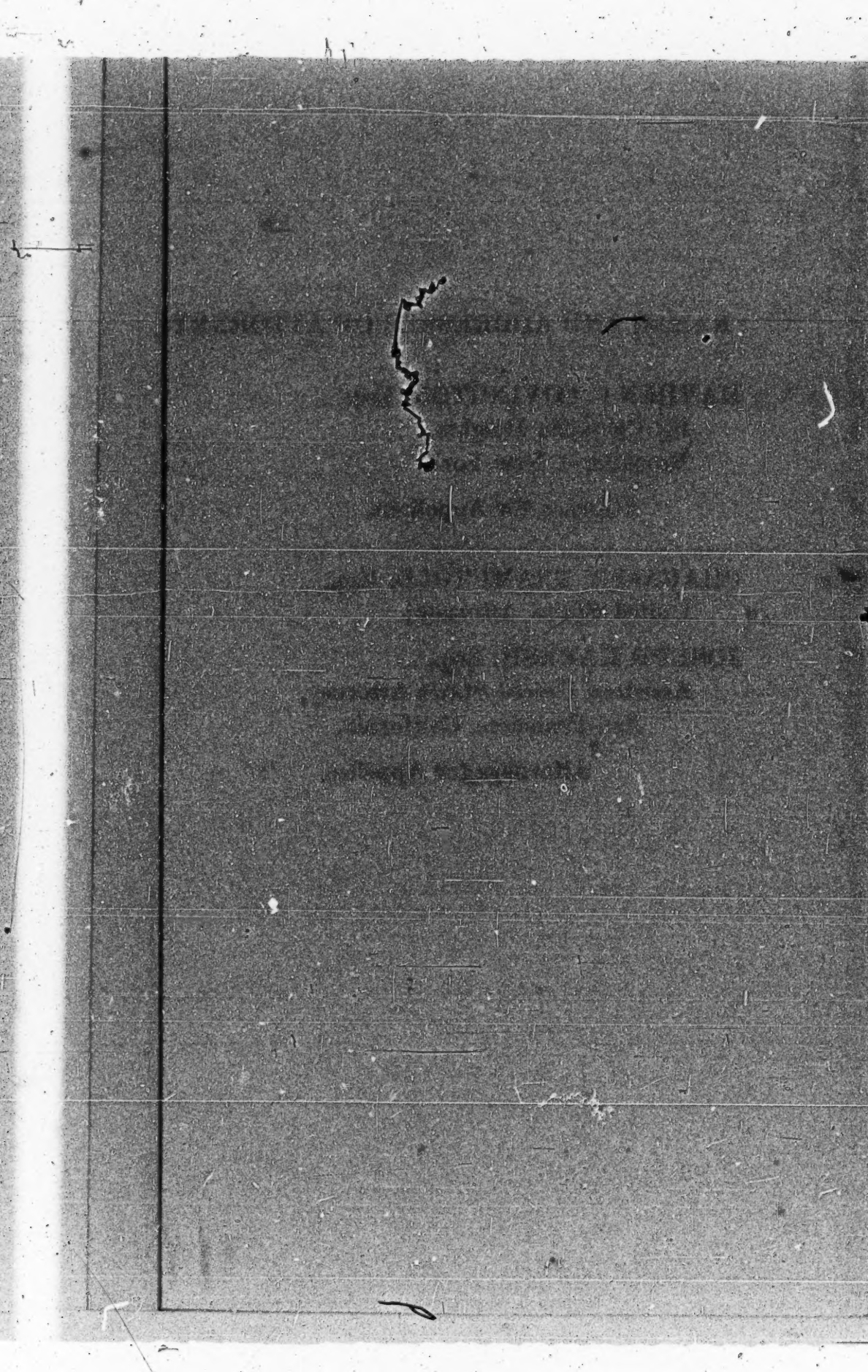

In the United States District Court for the Northern District of California, Southern Division

No. 33003

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE LEWIS DICKINSON,

Defendant.

INDICTMENT

Single Count

(Violation Section 12(a), Selective Service Act of 1948; 50 U.S.C. App. 462(a)). (Refusal to submit to and be inducted).

Penalty: Imprisonment not to exceed 5 years, or fine not to exceed $10,000, or both.

The Grand Jury charges: That George Lewis Dickinson, defendant herein, being a male citizen, of the age of 21 years, residing in the United States and under the duty to present himself for and submit to registration under the provisions of Public Law 759 of the 80th Congress, approved June 24, 1948, known as the "Selective Service Act of 1948," and thereafter to comply with the rules and regulations of said Act, and having, in pursuance of said Act and the rules and regulations made pursuant thereto, became a registrant of Local Board No. 37 of the Selective Service System in the City and County of San Francisco, State of California, which said Local Board No. 37 was duly created, appointed

and acting for the area of which the said defendant is a registrant, did, on or about the 17th day of July, 1951, in the City and County of San Francisco, State and Northern District of California, knowingly fail to perform such duty, in that he, the said defendant, having theretofore been duly classified in Class I-A and having theretofore been duly ordered by his said Local Board No. 37 to report for induction into the Armed Forces of the United States, and having so reported, did on the 17th day of July, 1951, in the City and County of San Francisco, State and Northern District of California, knowingly refuse to submit himself to induction and be inducted into the Armed Forces of the United States as provided in the said Selective Service Act of 1948, and the rules and regulations made pursuant thereto.

A True Bill.

/s/ JOHN F. RUSK,
Foreman.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney.

Approved as to form:

/s/ JK

[Endorsed]: Filed August 3, 1951.

United States District Court for the Northern District of California, Southern Division

At a Stated Term of the United States District Court for the Northern District of California, Southern Division, held at the Courtroom thereof, in the City and County of San Francisco, on Monday, the ninth day of August, in the year of our Lord one thousand nine hundred and fifty-one.

Present: The Honorable Edward P. Murphy, District Judge.

[Title of Cause.]

ARRAIGNMENT

This case came on this day ex parte. Joseph Karesh, Esq., Assistant U. S. Attorney, was present on behalf of the United States. The defendant, George Lewis Dickinson, was present in Court without counsel.

On motion of Mr. Karesh, the defendant was called for arraignment. The defendant was duly arraigned upon the Indictment filed herein against him, stated his true name to be as contained therein. The substance of the charge was stated to defendant and copy of Indictment handed to him. Defendant stated that he understood the charge against him.

On motion of Mr. Karesh, ordered case continued to August 20, 1951, for entry of plea.

United States District Court for the Northern District of California, Southern Division

At a Stated Term of the United States District Court for the Northern District of California, Southern Division, held at the Courtroom thereof, in the City and County of San Francisco, on Tuesday, the fourth day of September, in the year of our Lord one thousand nine hundred and fifty-one.

Present: The Honorable Edward P. Murphy, District Judge.

[Title of Cause.]

MINUTE ORDER ENTERING DEFENDANT'S PLEA OF NOT GUILTY TO INDICTMENT

This case came on regularly this day for entry of plea. Donald B. Constine, Esq., Assistant U. S. Attorney, was present on behalf of the United States. The defendant, George Lewis Dickinson, was present in proper person. Hayden C. Covington, Esq., attorney for defendant, was not present this day. James T. Davis, Esq., appeared as attorney for defendant for purpose of plea only.

The defendant was called to plead and thereupon said defendant pleaded "Not Guilty" to the Indictment filed herein against him, which said plea was ordered entered.

With the approval of the Court and the consent of the government, the defendant waived trial by jury in writing.

Ordered case continued to October 8, 1951, for trial. (Court)

United States of America

[Title of District Court and Cause.]

WAIVER OF JURY TRIAL

In conformity with Rule 23 of the Rules of Criminal Procedure for the District Courts of the United States, effective March 21, 1946, we, the undersigned, do hereby waive trial by jury and request that the above-entitled cause be tried before the Court sitting without a jury.

Dated: San Francisco, California, Sept. 4, 1951.

/s/ GEORGE L. DICKINSON,
Defendant.

/s/ JAMES T. DAVIS,
Attorney for Defendant.

/s/ DONALD B. CONSTINE,
Assistant United States
Attorney.

Approved:

/s/ EDWARD P. MURPHY,
Judge, United States District Court, Northern District of California.

[Endorsed]: Filed September 4, 1951.

[Title of District Court and Cause.]

AFFIDAVIT OF GEORGE LEWIS DICKINSON SUPPORTING ORDER TO SHOW CAUSE WHY AN ORDER SHOULD NOT BE MADE AUTHORIZING THE CLERK OF THIS COURT TO ISSUE SUBPOENAS DUCES TECUM

State of California,
County of San Francisco—ss.

George Lewis Dickinson, being duly sworn, deposes and says:

I am the defendant in this case. I make this affidavit to support my motion for the issuance of subpoenas duces tecum pursuant to Rule 17(b) of the Federal Rules of Criminal Procedure.

I live at 277 Athens Street, San Francisco 12, California, within the jurisdiction of the United States District Court for the Northern District of California.

I request the Court to enter an order directing the Clerk of this Court to issue a subpoena duces tecum to each of the following witnesses: Martin V. Coffey, Paul H. Griffith and Paul C. Wolman, the address of all of whom is 1712 G Street, N. W., Washington, D. C., commanding each of such witnesses to appear before this Court on the 8th day of October, 1951, and produce all of the books, papers and records of the Presidential Appeal Board, in connection with the classification made by the Presidential Appeal Board denying me my claim

for exemption as a minister and a IV-D classification authorized by the Regulations of the Selective Service System, and also to give testimony and answer questions propounded to them by my counsel as witnesses for the purpose of establishing the validity of the final determination made by the Presidential Appeal Board and each witness as a member of such board.

The testimony of each of the witnesses above named is material to my defense. I shall attempt to establish by questions propounded by my counsel that each of these witnesses participated in the final classification given to me by the Presidential Appeal Board. Each witness will testify that all of the evidence considered by him was reduced to writing and appeared in the file; that the undisputed evidence showed that I was a duly ordained minister of the Watchtower Bible and Tract Society and of Jehovah's Witnesses, a recognized religious organization under the Selective Service Act of 1948; that I was duly recognized by said organization and regularly performed my duties as such minister by pursuing the ministry as a vocation and not as an avocation, and that the file showed that I devoted substantially all of my time to the furtherance of my missionary evangelistic work and that I have dedicated my life to the performance of my duties as a minister. Each of such witnesses will testify that he did not find any evidence that I am not devoting my life to the ministry and pursuing it as avocation and that I had not dedicated my entire life to the performance of my duties as a minister. Each will

testify that he did not find that I fictitiously or falsely claimed to be an ordained minister and that each did not find that there was any evidence in the file which contradicted my claim that I preached and represented the Watchtower Bible and Tract Society as one of its duly ordained and regularly acting ministers and missionary evangelists.

I expect to show through the testimony elicited through my counsel upon the examination of the members of the Presidential Appeal Board which I request to be subpoenaed that they arbitrarily and capriciously denied me my claim for exemption as a minister of religion because I devoted part of my time to secular work for the purpose of supporting me in my ministry, and that there was no evidence before them that the performance of such secular work prevented me in any way from pursuing my ministry as a vocation. Upon information and belief I propose to show by cross-examination of the Presidential Appeal Board that they have classified me because I am one of Jehovah's Witnesses and that the members of the Presidential Appeal Board are biased and prejudiced against the ministerial claims of Jehovah's Witnesses as a class. They have classified me and held that I am liable for training and service solely because I am one of Jehovah's Witnesses and because I have performed secular work, neither of which facts justify legally the conclusion that I am not a minister of religion exempt from all training and service within the meaning of the Act and the Regulations.

I expect to show from an examination of the

witnesses that I request to be subpoenaed who are members of the Presidential Appeal Board that they acted without basis in fact or substantial evidence, without any evidence contradicting in any way my claim for exemption, contrary to law, the Act and Regulations, and violated my rights to due process of law, and therefore the order upon which the prosecution is based is illegal and void and of no force and effect.

In order to make good my defense I must take testimony from and examine at my trial said witnesses by oral examination as witnesses and question them in an effort to establish the invalidity of the final determination for the purpose of establishing the invalidity of the denial of my claim for classification in Class IV-D. Their testimony is material, as appears above.

This motion is being made pursuant to Rule 17 of the Federal Rules of Criminal Procedure. The prospective witnesses named above should be forced by legal process to attend the trial of this case. I do not have sufficient means to subpoena the witnesses and pay their fees and for their travel expense from Washington, D. C., to San Francisco and return. The testimony of each witness is material and it is necessary to subpoena them in order to prevent a failure of justice. I cannot safely go to trial without their testimony and presence. The testimony of each of such witnesses is material in this action because each made the determination that I was not entitled to a IV-D classification as a minister which made me liable to training and service. I believe

that the determination made by the Presidential Appeal Board is unlawful and arbitrary and capricious, and that their testimony will establish such invalidity.

In United States ex rel. Kulick v. Kennedy, 157 F. 2d 811 (C. A. 2d), reversed sub nom. Alexander v. United States ex rel. Kulick at 332 U. S. 174, on other grounds, Judge Learned Hand said as follows: "As we understand it, at his trial he may call the members of the board and may himself take the stand; he may testify to what he told them, and he may cross-examine them as to their motives, and in general as to the basis of their finding."

The Court is hereby requested to forthwith, following hearing of this motion, make an order authorizing the issuance of a subpoena duces tecum to each witness, Martin V. Coffey, Paul C. Wolman and Paul H. Griffith, commanding each to appear before this Court at 10:00 o'clock in the forenoon on the 8th day of October, 1951, and produce the above-described papers and give testimony on my trial. The Court is requested to shorten the time for giving notice to the attorney for the plaintiff, and order the Clerk of this Court to issue the subpoenas forthwith pursuant to Rule 17(b) and (c) of the Rules of Criminal Procedure.

This matter is being brought on for hearing on an order to show cause rather than notice of motion in order that the motion can be determined at an early date and the subpoenas served and returned to this Court before the .... day of September, 1951.

I am duly authorized to subpoena the records pursuant to Section 1670.17 of the Selective Service Regulations. The oral testimony of each of the witnesses who have been subpoenaed is material even though the witnesses do not produce records. The witnesses Coffey, Wolman and Griffith were responsible for the final classification denying me my claim for exemption as a minister. Even though each of these witnesses fails to produce records, their testimony is nevertheless material as to their motives and basis for their actions in denying me my claim for exemption as a minister. Even though each of Appeals for the Second Circuit in Kulick v. Kennedy, 157 F. 2d 811.

I am not engaged in a fishing expedition. The production of the documents and the giving of the testimony required by the subpoenas are material and necessary for the defense to the indictment upon the trial of this case. Since the validity of the administrative determination cannot be established unless and until there is an examination of the members of the Presidential Appeal Board who are responsible for the classification resulting in this prosecution, it is necessary that the Court issue the subpoenas.

/s/ GEORGE L. DICKINSON.

Subscribed and sworn to before me this 14th day of September, 1951.

[Seal] /s/ C. W. CALBREATH,
Clerk, U. S. District Court, Northern District of California.

[Title of District Court and Cause.]

AFFIDAVIT OF ATTORNEY SUPPORTING MOTION FOR SUBPOENAS DUCES TECUM

State of New York,
County of Kings—ss.

Hayden C. Covington, attorney for the defendant in this case, being duly sworn deposes and says:

The motion for the subpoenas should be granted for the reason that if they are denied because of immunity and privilege of said witnesses since they are administrative officers performing quasi-judicial functions, the rights of the defendant to confrontation of witnesses guaranteed by the Sixth Amendment to the Constitution of the United States will be violated.

The defendant, by his affidavit, has brought himself within the rule authorizing the Court to issue the subpoenas. He has shown by his papers a prima facie right to the subpoenas. The prima facie right cannot be impeached or denied because the witnesses may claim a privilege when they are called.

The rule of the Babcock case (Chicago, B. & Q. Ry. Co. v. Babcock, 204 U. S. 585, 593) does not apply. The reason is that that rule is applicable only in civil cases. The Sixth Amendment precludes the application of the principle in criminal cases. The Amendment, among other things, says that in "all criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against

him; to have compulsory process for obtaining witnesses in his favor . . ."

Convictions have been set aside in cases where there was even an indirect violation of the constitutional provision. (Kirby v. United States, 174 U. S. 47, 55; Dowdell v. United States, 221 U. S. 325, 330.) Here the Government requests the Court to hold that the rule of immunity of judges, that extends to administrative officers, is supreme and above the Constitution. The rule of immunity has been held to be subordinate to the Constitution. When the two conflict the courts have held that the immunity rule must yield to the right-of-way guaranteed by the Constitution. Bert v. The City of New York, 156 F. 2d 791 (C. A. 2d) and Picking v. Pennsylvania Railroad Co., 151 F. 2d 240 (C. A. 3rd).

The impact of the Constitution and Rule 17 of the Rules of Criminal Procedure may not be avoided by a statement that the scope of review is limited. While Estep v. United States, 327 U. S. 114 and Cox v. United States, 332 U. S. 442, limit the review to a determination of questions of law there is nothing to support the conclusion that those cases preclude the examination of board members who violate the law. The contrary conclusion is apparent in the decisions.

The right to examination of the board members expressly decreed in Kulick v. Kennedy, 157 F. 2d 811 (C. A. 2nd) is implicit in Estep v. United States, 327 U. S. 114. The Court said that if a local board classified a registrant liable for service "be-

cause he was a Jew, or a German, or a Negro, it would act in defiance of the law."

How may an act "in defiance of the law" be established? May it not be proved by searching questions put to the draft board members? Are not the members of the boards [illegible] accustoming their prejudices or distaste of the law? Is the definition of the Court contained in pleading? May not justice require the vote of the board members to be contrary to logic? Must justice be blinded by the darkness of the Star Chamber proceedings contrary to the Constitution?

The determination of all questions cannot be confined to the draft board papers. The courts have held that it is necessary to hear testimony of board members. (Nardi v. United States, 178 F. 2d 926 (C. A. 9th); Estep v. Kennedy, 187 F. 2d 811 (C. A. 2d). Compare United States v. Stiles, 169 F. 2d 355 (C. A. 3rd); United States v. Nelson, 181 F. 2d 30 (C. A. 3rd); Nardi v. United States, 184 F. 2d 912 (C. A. 9th).) Since the courts have held that oral examination of draft board members is permitted to determine whether there has been a violation of due process of the law by making prejudicial statements, classification according to class, failure to make a written record and denial of a full and fair hearing upon a personal appearance, then by force of the same reason the oral examination of board members must be permitted to determine whether they have prejudice against ministers who support themselves by secular work or have classi-

fied the defendant because he is a member of Jehovah's Witnesses.

These special points cannot be determined until the constitutional right of confrontation of witnesses is granted and the officials are put to the acid test of cross-examination.

The right cannot be refused because of inconvenience to the members of the Presidential Appeal Board. They have no greater or higher rights under the law than the members of the lower board that made the first classification. Is the fact that the members of the appeal board are too busy to attend a federal court in order to prevent the hiding of a defense of the law more important than preventing a miscarriage of justice by their absence? Is the right to full and fair judicial hearing in the federal court subject to the convenience of administrative officers who started the case by defiance of the law in classifying the defendant?

Under the law and the Constitution the defendant has the right to be confronted with the three men who are responsible for his prosecution, the Presidential Appeal Board. Inconvenience by the lawful process of this Court ought not to persuade this Court with such argument to withhold the subpoenas. In Bowles v. Ackerman (S.D.N.Y.) 4 F. R. D., the judge said: "The further claim that its enforcement staff is too busy to spare the time involved in such examinations does not impress." "The government must choose; either it must leave the transactions in the obscurity from which a trial will draw them, or it must expose them fully."

[illegible]

[illegible]

[illegible]

o'clock in the forenoon or as soon thereafter as counsel can be heard, why an order should not be made authorizing the Clerk of this Court to issue subpoenas duces tecum, pursuant to Rule 17(b) of the Federal Rules of Criminal Procedure commanding Martin V. Colley, Paul H. Griffith and Paul C. Wolgast, the addresses of all of whom is 1712 G Street, N. W., Washington, D. C., to appear before this Court at the United States Courthouse at San Francisco, California, on the 9th day of October, 1951, to give testimony and to produce the documents described in the attached affidavit in behalf of the defendant on the trial of the issues in this case; and it is further ordered that service of this order and the supporting affidavits be made by the Clerk of this Court through delivery to the United States Attorney of a conformed copy of this order and the supporting affidavits within twelve hours of the signing of this order, and that the original of this order and the supporting affidavits be filed in the office of the Clerk of this Court forthwith and the motion be placed on the motion calendar of this Court at the time fixed above.

Done at San Francisco, California, on the .... day of September, 1951.

.....,

United States District Judge.

[Endorsed]: Filed September 21, 1951.

United States District Court for the Northern District of California, Southern Division

At a Stated Term of the United States District Court for the Northern District of California, Southern Division, held at the Courtroom thereof, in the City and County of San Francisco, on Friday, the fifth day of October, in the year of our Lord one thousand nine hundred and fifty-one.

Present: The Honorable Oliver J. Carter, District Judge.

[Title of Cause.]

MINUTE ORDER DENYING MOTION TO ISSUE PROCESS AT EXPENSE OF UNITED STATES AND FOR SUBPOENA DUCES TECUM

It Is Ordered that the motion to issue process at expense of the United States and for subpoena duces tecum be, and the same is hereby, Denied.

[Title of District Court and Cause.]

ORDER

Before the court are motions on behalf of the defendant for the issuance of Subpoenas Duces Tecum pursuant to Rule 17(b) of the Federal Rules of Criminal Procedure. The defendant requests that the court issue a Subpoena Duces Tecum to the

members of the Presidential Appeal Board to produce all of the books, papers and records of said Board. The defendant also seeks to have each member of the Presidential Appeal Board present in court for examination in order to establish an alleged defense in this case. The affidavits in support of this motion are insufficient, in that they do not state sufficient facts to authorize this court to exercise its discretion to order the subpoena to be issued and the witnesses to appear at the cost of the government. The affidavit merely sets forth the conclusion that the defendant is an indigent person, but no showing has been made to establish that the defendant is in fact indigent. The affidavit also fails to show how the evidence of the witnesses is material to the defense in this case. In essence, the defendant is seeking to attack the decision of the Presidential Appeal Board by the examination of the members of that Board. It is the record of the Board and the evidence that was presented to the Board which determines whether or not the Board acted in an arbitrary and capricious manner. The testimony of the members of the Board is not material to this issue. Cox v. the United States, 332 U. S. 442, at page 454. At the time of the hearing on the motion the government advised the court and counsel for the defendant that the complete Selective Service file of the defendant, including the record of any proceedings on appeal, would be available in court, and copies thereof would be made available to the defendant upon request.

In view of this fact the motions for the issuance of Subpoenas Duces Tecum are denied.

Dated: October 5, 1951.

/s/ OLIVER J. CARTER,
United States District Judge.

[Endorsed]: Filed October 5, 1951.

United States District Court for the Northern District of California, Southern Division

At a Stated Term of the United States District Court for the Northern District of California, Southern Division, held at the Courtroom thereof, in the City and County of San Francisco, on Monday, the eighth day of October, in the year of our Lord one thousand nine hundred and fifty-one.

Present: The Honorable Michael J. Roche, District Judge.

[Title of Cause.]

MINUTES OF TRIAL; ORDER DENYING MOTION FOR JUDGMENT OF ACQUITTAL; SENTENCE; ORDER DENYING MOTION FOR BAIL PENDING APPEAL

This case came on regularly this day for trial before the Court sitting without a jury, a trial by jury having heretofore been waived in writing by the defendant and counsel for both sides. Joseph Karesh, Esq., Assistant U. S. Attorney, was present

on behalf of the United States. The defendant, George Lewis Dickinson, was present in proper person and with his attorney, John Brill, Esq. On motion of Mr. Brill, it is Ordered that Hayden Covington, Esq., be and he is hereby associated as counsel for defendant. Hayden Covington, Esq., was admitted to practice in this Court for the purpose of appearing as one of the attorneys in this case only.

Opening statements were made by respective counsel. Rose A. Brock was sworn and testified on behalf of the United States. Mr. Karesh introduced in evidence and filed certain exhibits which were marked U. S. Exhibits Nos. 1 to 25, inclusive. Thereupon the Government rested its case.

The defendant, George Lewis Dickinson, was sworn and testified in his own behalf. Rose A. Brock was recalled and testified on behalf of the defendant. Counsel for defendant introduced in evidence and filed a certain exhibit which was marked Defendant's Exhibit A. Counsel for defendant offered certain other exhibits which were marked Defendant's Exhibits B, C and D for identification.

Counsel for defendant made a motion for judgment of acquittal, which motion was ordered denied.

Thereupon the case was submitted to the Court, and due consideration having been thereon had, It Is Ordered that the defendant, George Lewis Dickinson, be and he is hereby adjudged Guilty of the offense charged in the Indictment herein.

The defendant was then called for judgment. The

Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant, George Lewis Dickinson, be and he is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Two (2) Years.

It Is Ordered that judgment be entered herein accordingly.

Counsel for defendant made a motion for bail pending appeal, which said motion was ordered denied. Ordered that said defendant be remanded to the custody of the United States Marshal.

District Court of the United States for the Northern District of California, Southern Division

No. 33002

UNITED STATES OF AMERICA,

vs.

GEORGE LEWIS DICKINSON

JUDGMENT AND COMMITMENT

On this 8th day of October, 1951, came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a finding of guilty of the offense of violation of Section 12(a), Selective Service Act of 1948; 50 U.S.C. App. 462(a), (defendant, George Lewis Dickinson, did, on or about July 17, 1951, at San Francisco, California, knowingly refuse to submit himself to induction and be inducted into the Armed Forces of the United States as provided in said Selective Service Act of 1948; said defendant had theretofore been duly classified in Class I-A by Local Board No. 37 of the Selective Service System at San Francisco, California) as charged in the indictment (single count); and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Two (2) Years.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ MICHAEL J. ROCHE,
United States District Judge.

Examined by:

/s/ JOSEPH KARESH,
Assistant U. S. Attorney.

The Court recommends commitment to: a Federal Penitentiary.

Filed and Entered this 8th day of October, 1951.

/s/ C. W. CALBREATH,
Clerk.

By /s/ T. R. PETTERSON,
Deputy Clerk.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant: George Lewis Dickinson, 277 Athens Street, San Francisco 12, California.

Name and address of appellant's attorney: Hayden C. Covington, 124 Columbia Heights, Brooklyn 2, New York.

Offense: Violation of Selective Service Training Act.

Concise statement of judgment and sentence rendered Nov. 8, 1951, is that the defendant was committed to custody of the Attorney General for a period of two years.

Name of institution where now confined is County Jail No. 1, City and County of San Francisco, State of California.

I, the above-named appellant, by my attorney, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated: October 9, 1951.

/s/ HAYDEN C. COVINGTON,
Attorney for Appellant.

[Endorsed]: Filed October 9, 1951.

In the District Court of the United States for the Northern District of California, Southern Division

No. 33002

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE LEWIS DICKINSON,

Defendant.

Before: Hon. Michael J. Roche,
Judge.

REPORTER'S TRANSCRIPT

Monday, October 8th, 1951

Appearances:

For the Plaintiff:
JOSEPH KARESH, Esq.

For the Defendant:
HAYDEN C. COVINGTON, ESQ., and
JOHN BRILL, Esq.

October 8th, 1951, 10 A.M.

The Clerk: U. S. vs. George Lewis Dickinson.

Mr. Karesh: Ready for the United States.

Mr. Brill: In this matter, if the Court please, I should like to move the Court for an order for special admission to practice before this Court on the part of Mr. Hayden Covington. Mr. Covington is a member of the bar of the State of New York

and should like to represent the defendant in this matter.

Mr. Karesh: That is agreeable.

The Court: You will be sworn.

(Counsel sworn.)

Mr. Karesh: For the record, my name is Joseph Karesh, appearing on behalf of the United States. I think perhaps, your Honor, in order to save time, counsel may wish to examine the draft file record before we proceed. It will take but a moment. If that is agreeable. Counsel has photostats but he should like to look at the original file which we have. May we proceed, your Honor?

The Court: Proceed.

Mr. Karesh: May it please your Honor, the Grand Jury has returned an indictment against the defendant, George Lewis Dickinson, violation of the Selective Service Act of 1948. The Government of the United States will show that the defendant registered with 437 of the Selective Service System [2*] in San Francisco, California, that he was duly classified in Class 1-A, that he was ordered to report for induction at the induction station, San Francisco, on the 17th day of July, 1951. That he did so report and at the induction station he knowingly refused to submit himself to induction, being inducted into the armed forces of the United States. The Government will rely upon the Selective Service file of the defendant as well as on the testimony of the officer at the induction station where the

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

defendant, we will show, refused induction, the conversation had with the agent of the Federal Bureau of Investigation with relation to the alleged violation of the Selective Service Act of 1948.

Mr. Covington: May it please the Court, the defendant has pleaded not guilty in this case and his contention will be that he admits refusing to submit to induction but in his defense contends that the Draft Board order is invalid because the Draft Board, the local Board, the Board of Appeal, and the Presidential Appeal Board acted arbitrarily and capriciously and without basis in fact in their giving him a 1-A classification instead of a 4-D classification, the 4-D classification to that which is granted to ministers of religion exempting them from all training and service. The defendant also contends, may it please the Court, that the Draft Board proceedings are invalid because there has been a denial of procedural due process of law. We will rely upon [3] the Draft Board file which will be offered, I assume, into evidence by the Government and also the testimony of the defendant. That is our case, may it please the Court.

The Court: Call your first witness.

ROSE A. BROCK

called on behalf of the plaintiff, being first duly sworn, testified as follows:

The Clerk: State your full name and occupation to the Court.

A. My name is Rose A. Brock, co-ordinator of Group B, 2038 Mission Street.

(Testimony of Rose A. Brock.)

Mr. Covington: May I apologize, I didn't hear your next name, Madam?

The Witness: Brock — B-r-o-c-k.

Mr. Covington: Thank you.

Direct Examination

By Mr. Karesh:

Q. What did you say your occupation was?

A. Co-ordinator.

Q. What is a co-ordinator?

A. Well, I take care of the mail, allocate all the different things to the girls, have a general supervision over the affairs of local Board Group E.

Q. In other words, you are in charge of the correspondence of the Board?

A. Yes, sir. [4]

Q. Sending out of the mail and the receipt of the mail? A. That's right.

Q. The recording of entries in the files?

A. That's right.

Q. How long have you been the co-ordinator?

A. Since a year ago June.

Q. Prior to that time were you a Selective Service employee? A. Yes, sir.

Q. And in what capacity, for how long?

A. I was about three years, in '42 to '45—I was a clerk-typist and then I was assistant clerk.

Q. You came into the Selective Service under the 1948 Act when?

A. In—well, I worked for them at different

(Testimony of Rose A. Brusk.)

times. I was in '39—I was in '40, for about a year, and then I came in, in June of '50.

Q. What Board did you work for in '40?

A. Well, we didn't work for any particular Board. We worked—all of us worked together on different projects.

Q. What do you mean by that?

A. Well, we had to set up—we sent out questionnaires and made—oh, we had to get the records together for the different books, we had to type them together, and we had to make up lists of registrants and different records that had to be sent to Sacramento, and we all worked together on this [5] particular thing as a project.

Q. This group over which you are the co-ordinator, what Board does it contain?

A. 37, 39 and 41.

Q. Where is 37 located?

A. 2038 Mission Street.

Q. And in response to a subpoena of the United States did you produce the file of one George Lewis Dickinson? A. Yes, sir.

Q. He is a registrant of what Board?

A. 37.

Q. And that, you say, is in San Francisco?

A. Yes, sir, 2038 Mission Street.

Mr. Karesh: Counsel, do you wish to see each document as I offer it?

Mr. Covington: No, I do not, sir.

Mr. Karesh: You have photostats.

Mr. Covington: I guess I do and—that is, most

(Testimony of Rose A. Brock.)

of the file. I will consent to the introduction of any of the files you care to offer, or the entire file.

Mr. Karesh: All right. Then, your Honor, in order to expedite the matter, it is stipulated that we may offer the documents in the file as though the witness were identifying them and the entries in the file.

As first U. S. Exhibit, No. 1, we would offer the registration [6] card of George Lewis Dickinson.

The Clerk: Government Exhibit 1 admitted and filed into evidence.

Mr. Karesh: I should like to read it to your Honor.

(Thereupon registration card referred to above was received in evidence and marked Government's Exhibit No. 1, and was read to the Court.)

The Court: The date?

Mr. Karesh: The date of registration is September 15, 1948.

As next exhibit in order from the Selective Service file is the Selective Service classification questionnaire. Ask that be marked and received in evidence.

The Court: It may be admitted next in order.

The Clerk: Government Exhibit 2 admitted and filed in evidence.

(Thereupon Selective Service classification questionnaire was received in evidence and marked Government's Exhibit No. 2.)

(Testimony of Rose A. Brock.)

Mr. Karesh: I should like to read the questionnaire, your Honor.

(Thereupon Government's Exhibit No. 2 was read to the Court.)

Mr. Karesh: . . . now, on the back of the questionnaire, may it please your Honor, there is this notation:

"Minutes of action by Local Board and Appeal Board: [7]

"July 31, 1950," 1-A by vote of four to nothing. August 2, 1950, Form 110 mailed. And that form, I believe counsel agrees, is the notice of the classification of 1-A.

The next document in the file which we offer in evidence as U. S. Exhibit No. 3, sent out August 25, 1950, by the registrant to the Board and bearing stamp received by the Board August 28th, 1950, this letter.

The Court: No objection, it will be received and marked.

The Clerk: Government's Exhibit 3 admitted and filed in evidence.

Mr. Covington: Pardon me, Mr. Karesh, is that a letter?

Mr. Karesh: That is a letter.

Mr. Covington: From the registrant?

Mr. Karesh: Yes.

(Thereupon letter referred to above was received in evidence and marked Government's Exhibit No. 3, and was read to the Court.)

(Testimony of Rose A. Brock.)

The Court: What is the date of that?

Mr. Karesh: August 25, 1950.

The next entry of the Board: 8/31/50. "L. B. members request proof of being ordained.

"September 2, 1950, notice sent to registrant to appear September 7th at 7:30 p.m. on Form 390."

390, your Honor, I believe will be stipulated as the notice with reference to personal [8] appearance.

The next record on the back of the questionnaire:

"September 7, 1950, registrant appeared. Local Board held over case until next meeting, to be held September 14th at 7:30 p.m."

There is a notation in the file—I think you have seen this, counsel——

Mr. Covington: I have seen a copy of it. I have no objection.

Q. (By Mr. Karesh): I might ask the witness to identify this. Is this the notation concerning the personal appearance? A. Yes, it is.

Q. And that was on September 7, 1950?

A. That's right.

Mr. Covington: May I ask, Madam, who made that notation? A. I did.

Mr. Karesh: This will be U. S. Exhibit No. 4 in evidence, your Honor.

The Court: Admitted and marked.

The Clerk: Government's Exhibit 4 admitted and filed in evidence.

(Memorandum of the witness Brock marked Government's Exhibit No. 4 in evidence.)

(Testimony of Rose A. Brosk.)

Mr. Karesh: Exhibit 4 reads: "Dickinson. Public building where he preaches. Has not been ordained. Devotes his full time to the work of preaching. [3] Supports himself through this work. Jehovah's Witness."

The next entry on the back of the questionnaire: "September 14, 1950, local Board members reviewed information.

"September 14, 1950, 1-A continued"—a vote of three to nothing.

"September 15, 1950, form 110 mailed."

That is a notice of continuation of the 1-A classification.

The next document which we should offer in evidence is the letter of appeal to the Board of Appeal dated September 21, 1950, sent by Dickinson to the local Board.

Mr. Covington: Mr. Karesh, do you intend to offer the memorandum, Exhibit No. 4?

Mr. Karesh: That is in evidence.

Mr. Covington: I am sorry.

Mr. Karesh: We offer this letter of appeal as U. S. Exhibit No. 5.

The Court: Admitted and marked.

The Clerk: Government's Exhibit No. 5 admitted and filed in evidence.

(Thereupon letter of appeal, September 21, 1950, was received in evidence and marked Government's Exhibit No. 5.)

(Testimony of Rose A. Brock.)

(Government's Exhibit No. 5 was read to the Court.)

Mr. Karesh: There also appears in the file an affidavit [10] dated September 7, 1950, from one C. David Easter. We offer in evidence as part of the Selective Service file and ask that its contents be deemed read into the record. Counsel may later wish to read the document.

Mr. Covington: That's fine. That's Exhibit No. 6?

Mr. Karesh: That is No. 6.

The Court: Received and so marked.

The Clerk: Government's Exhibit 6 received and filed in evidence.

(Thereupon affidavit of C. David Easter was received in evidence and marked Government's Exhibit No. 6.)

Mr. Karesh: That is in the Selective Service file, if your Honor please, under date of October 29, 1950, an affidavit from one Archie R. Dewar, a letter from Mrs. Margaret Busterna, and a note from Mrs. Alga Egge—I think it is—and those documents are attached to a letter received from George Dickinson. I would like to offer these as one exhibit, and I should like to read the letter, but ask that the contents of the other documents be deemed read into the record. They are offered as being part of the file of the defendant.

The Court: No objection?

(Testimony of Rose A. Brock.)

Mr. Covington: None, your Honor.

The Court: Be admitted and marked next in order.

The Clerk: Government's Exhibit 7 admitted and filed in [11] evidence.

(Letter and documents attached were received in evidence and marked Government's Exhibit No. 7, and the letter was read to the Court.)

Mr. Karesh: I am sorry, your Honor; I said October 29th. That is when the notary's commission expired, but it is the 24th day of November, 1948, that Mr. Dewar appeared before the notary public. There is no stamp when this document was received, but I presume it was received some time in '48.

There is a notice or order to report for physical examination—was sent to registrant—1/19/51, "Mailed Form 223 (order to report for physical exam.) 1/30/51."

I should like to offer in evidence a copy of the order to report for armed forces physical examination.

Mr. Covington: I have no objection, your Honor.

The Court: Admitted next in order.

The Clerk: Government's Exhibit 8 admitted and filed in evidence.

(Thereupon Form 223, dated January 19, 1951, was received in evidence and marked Government's Exhibit No. 8.)

(Testimony of Rose A. Brock.)

Mr. Karesh: That order directs the registrant to report January 30, 1951. There is a notation on the back of the questionnaire: "2/3/51. Mailed Form 62 (certificate of acceptance)." [12]

That, your Honor, is a notification. I think it is stipulated, too, that tells the registrant that he has been found acceptable physically for service in the armed forces of the United States.

There is an entry on the back of the file, the next entry: "2/5/51. Forwarded cover sheet to Appeal Board."

Q. By cover sheet you mean, of course, the entire Selective Service file? A. That is true.

Q. Of the registrant? A. That is true.

Mr. Karesh: Here is the form, your Honor, 120, the "Individual Appeal Record" showing the classification of 1-A by local Board and the forwarding to the Appeal Board. We will ask that the document now be marked next in order for identification and thereafter when we come to the minute action by the Appeal Board we will ask that it be received in evidence.

The Court: Marked for identification.

The Clerk: Government's Exhibit 9 marked for identification.

(Thereupon Form 120 was marked Government's Exhibit No. 9 for identification only.)

Mr. Karesh: The next entry, may it please your Honor, is: "2/19/51, classified 1-A by Appeal Board." And the document which I now offer in

(Testimony of Rose A. Brock.)

evidence as U. S. Exhibit No. 9 in [13] evidence—the document marked 9 for identification. This is the minutes of action also by the Appeal Board Panel No. 2, with the State of California reflecting that registrant was classified by the Appeal Board in Class 1-A by a vote of three to nothing. That entry likewise, as I indicated, appears on the back of Selective Service questionnaire. The other document, your Honor, is a duplicate of the individual appeal record. It only has the notification that the Board classified the subject in Class 1-A. I presume it does not have to be received in evidence.

Mr. Covington: I have no desire for it.

Mr. Karesh: Counsel has no desire that this be received in evidence. It has no materiality.

The Clerk: Exhibit No. 9 previously marked for identification now in evidence.

(Thereupon Government's Exhibit No. 9 for identification only was received in evidence.)

Mr. Karesh: The letter back to the Appeal—the Local Board advises them that they are returning the cover sheet by the Board of Appeals to Board 37, dated February 20, 1951. Like to offer this as exhibit next in order.

The Court: Received and marked.

The Clerk: Government's Exhibit 10 admitted and filed in evidence.

(Letter of transmittal, February 20, 1951, was received [14] in evidence and marked Government's Exhibit No. 10.)

(Testimony of Rose A. Brock.)

Mr. Karesh: Now, if it please your Honor, there is a document in the file under date of March 21, 1951, to which is attached a copy of a letter sent the same day, February 28—apparently sent the same day, February 28th—the copy to Major General Hershey, the National Director of Selective Service. I should ask leave to offer this in evidence as one exhibit.

The Court: May be received and marked next in order.

The Clerk: Government's Exhibit 11 admitted and filed in evidence.

(Thereupon letter referred to above was received in evidence and marked Government's Exhibit No. 11.)

Mr. Karesh: I should like to read this, your Honor.

(Government's Exhibit 11 in evidence, letter from defendant, dated February 28th, to Selective Service system, and attached thereto copy of letter to Major General Hershey, dated February 28, 1951, were read to the Court.)

Mr. Karesh: There is a letter in the file, your Honor, dated March 12, 1951, and received by the Board March 13, 1951, from the State Director of Selective Service, to Local Board 37, which we should like to offer in evidence as exhibit next in order on behalf of the United States.

The Court: Admitted and marked next in order.

(Testimony of Rose A. Brock.)

The Clerk: Government's Exhibit 12 admitted and filed in [15] evidence.

(Thereupon letter referred to above was received in evidence and marked Government's Exhibit No. 12.)

Mr. Karesh: This letter reads as follows (reading).

Mr. Karesh: There is a notation on the back of the questionnaire under date of "3/13/51, Forwarded cover sheet to State Headquarters at their request."

There is in the file as an exhibit next in order dated April 16, 1950, with certain enclosures from the National Director of——

Mr. Covington: 1951.

Mr. Karesh: ——1951, which we should like to offer in evidence as exhibit next in order.

The Court: No objection?

Mr. Covington: No objection.

The Court: It may be admitted and marked next in order.

The Clerk: Government's Exhibit 13 admitted and filed in evidence.

(Thereupon letter referred to above was received in evidence and marked Government's Exhibit No. 13 and read to the Court.)

Mr. Karesh: There is a notation under date of 6/14/51: "Cover sheet returned from State Headquarters."

(Testimony of Rose A. Brock.)

Then there is a notation, 6/5/51: "Classified 1-A by National Selective Service appeal" by a vote of three to [16] nothing.

"6/15/51, Form 110 mailed."—Notice of the classification by the Presidential Appeal Board.

I should like, your Honor, to offer in evidence as one exhibit the letter returning the file to the Board under date of June 12, 1951, to which is attached the record of the National Selective Appeal Board received June 14, 1951, by San Francisco Local Board, Group B, which has jurisdiction over Board 37.

Mr. Covington: June 15, is it?

Mr. Karesh: It has here, received June 14. The entry on the back of the questionnaire says just as I said, 6/14/51, "Cover sheet returned from State Headquarters."

Mr. Covington: All right.

The Court: It may be received and marked next in order.

The Clerk: Government's Exhibit 14 admitted and filed in evidence.

(Thereupon letter and record referred to above were received in evidence and marked Government's Exhibit No. 14.)

Mr. Karesh: I might ask you this question:

Q. National Headquarters never communicates directly with you; you make your correspondence with your State Director, isn't that right?

A. That's right.

(Testimony of Rose A. Brock.)

Mr. Karesh: I should like to read Government's Exhibit 14, [17] your Honor.

(Government's Exhibit No. 14 was thereupon read to the Court.)

Mr. Karesh: There is on the back of Selective Service questionnaire this notice: "Issued SSS Form 150 (spec. Form for conscientious objector)." There also appears two notations in the file.

I should like, counsel, to ask the Clerk about these writings.

Mr. Covington: No objection.

Q. (By Mr. Karesh): Who is Frances?

A. She is sitting right back in the courtroom, Miss Flowers.

Q. Who is Maxine (spelling) N-o-r-d——

A. Nordycke. She isn't with us any longer.

Q. How do you spell her name?

A. (Spelling): N-o-r-d-y-c-k-e.

Q. Frances what? A. Flowers.

Q. Is she still a member, an employee of the Board? A. She is assistant co-ordinator.

Q. How about the other lady, Maxine Nordycke?

A. Nordycke—she doesn't work with us. She isn't with us any longer.

Q. Was she working in June, 1951?

A. She was, yes. [18]

Q. And then there is a notation, "B. C." Who is "B. C."? A. Bernice Charleston.

Q. What is her occupation?

A. She is assistant clerk.

(Testimony of Rose A. Brock.)

Q. And there are two notations here. Can you explain these notations?

A. When Mr. Dickinson came in he requested a Form 150, which is the conscientious objector form, and so Miss Charleston asked me if she should issue him the form. So that's why she wrote this—he wrote this request down here and she signed it. Shall I read this?

Mr. Karesh: May we then offer that as one exhibit and she may explain the exhibit, your Honor? Is that agreeable, counsel?

Mr. Covington: Satisfactory, yes.

The Court: Admitted and marked.

The Clerk: Government's Exhibit 15 admitted and filed in evidence.

(Two memorandums dated June 25, 1951, were received in evidence and marked Government's Exhibit No. 15.)

Mr. Karesh: All right, Madam.

A. You would like me to read this?

Q. Just read it and explain it.

A. All right. "When registrant"—these are my instructions. "Mr. Dickinson called today and I issued him a form, [19] SSS Form No. 150 per Mrs. Brock's instructions."

I asked Mr. Dickinson—I requested the clerk to ask Mr. Dickinson why he requested a Form 150 at this late date. So then this is the other note in here. This is my instructions:

"When registrant brings in Form 150, request

(Testimony of Rose A. Marsh.)

him to put in writing the reason why he changed his mind regarding signing questionnaire and crossing it off, then, later requesting Form 150?"

Well, we wanted to know his explanation of it, and that is why I asked him to put it in writing why he wanted a Form 150 at this late date.

Mr. Karesh: Now, the Board did furnish him with that form, and the next exhibit, your Honor, July 2, 1951, is the special form for conscientious objectors completely filled out. I would like to offer it as part of the file and ask its contents be deemed read into the record.

The Court: No objection?

Mr. Covington: No, there is not, your Honor.

The Court: It may be admitted and marked next in order.

Mr. Karesh: I would call your Honor's attention to the fact that there is signed: "(b) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form, and I am further conscientiously opposed to participation [20] in non-combatant training or service in the armed forces. I, therefore, claim exemption from combatant training and service and, if my claim is sustained, I understand that I will, because of my conscientious objection to non-combatant service in the armed forces, be deferred as provided in Section 6 (j) of the Selective Service Act of 1948."

Mr. Covington: It is signed by the defendant?

Mr. Karesh: Signed by the defendant. Section

(Testimony of Rose A. Brock.)

A. your Honor, claiming conscientious objection to participation only in the combatant service was stricken out.

The Clerk: Government's Exhibit 16 admitted and filed in evidence.

(Thereupon special form for conscientious objector was received in evidence and marked Government's Exhibit No. 16.)

Mr. Karesh: There is a notation on the back of questionnaire: "7/3/51, received SSS Form No. 150 (spec. form for conscientious objector)."

At this time, if your Honor please, I should like to offer in evidence a copy of the order to report for induction [illegible] July 2, 1951, directing George Lewis Dickinson, 305 East Dirian Street, Apartment 12, Coalinga, California, to report to Local Board at 30 Van Ness Avenue, San Francisco, California, at 8 a.m. on the 16th day of July, 1951, for forwarding to an induction center. [21]

The Court: Be admitted and marked next in order.

The Clerk: Government's Exhibit 17 admitted and filed in evidence.

(Thereupon order to report for induction was received in evidence and marked Government's Exhibit No. 17.)

Mr. Karesh: Your Honor, it is stipulated that this document, which is the report of physical examination, need not be offered in evidence. Its

(Testimony of Rose A. Brock.)

notations are already here that he reported and that he passed his physical examination.

The Court: Is that stipulated?

Mr. Covington: Yes.

Mr. Karesh: This is the old record, your Honor, of the—this has a two-fold purpose. It is a record when he reported for the physical on January 30, 1951, and it is likewise, your Honor, when he reported later on and filled out the other blanks when he reported for induction, but did not accomplish his induction. It also has with it a certificate of acceptability. We might offer this copy of the certificate of acceptability. That would take care of this exhibit.

Mr. Covington: That is all right, your Honor.

The Court: Be admitted and marked next in order.

The Clerk: Government's Exhibit 18 received and filed in evidence.

(Thereupon copy of certificate of acceptability was received in evidence and marked Government's Exhibit No. 18.) [22]

Mr. Covington: What is the date of that?

Mr. Karesh: That, counsel, is certificate of acceptability, January 30, 1951, that he passed.

Mr. Covington: Thank you.

Mr. Karesh: That is reflected on the back of the questionnaire.

The next is a letter—copy of a letter dated July 6, 1951, with reference to the form for conscientious

(Testimony of Rose A. Brock:)

objector, and I should like to offer that as an exhibit next in order.

The Court: Admitted and marked.

The Clerk: Government's Exhibit 19 admitted and filed in evidence.

(Thereupon letter dated July 6, 1951, was received in evidence and marked Government's Exhibit No. 19.)

Mr. Karesh: I should like to read it to your Honor (reading letter dated July 6, 1951, to the Court).

Mr. Karesh: The next document in the file, your Honor, is a change of address from Mr. Dickinson, July 10, 1951, indicating that his new address is 277 Athens Street, San Francisco 12, California. We would like to offer that in evidence as an exhibit.

The Court: Admitted and marked next in order.

The Clerk: Government Exhibit No. 20 received and filed in evidence.

(Thereupon notice of new address was received in evidence [23] and marked Government's Exhibit No. 20.)

Mr. Karesh: The next document in the file is a copy to the Board of a letter sent to Colonel Leitch from Mr. Dickinson under date of July 10, received by the Local Board July 10, and there is also received by the Local Board under date of July 11, sent July 11, a letter with relation to the Form 100. The letter to the State Director (dated July 10,

(Testimony of Rose A. Brook.)

1951), I think will be U. S. Exhibit No. 21, and the letter to the Board that I have referred to, ask that it be received in evidence, and I think it will be marked Exhibit No. 22.

The Clerk: Government's Exhibit No. 21 in evidence.

(Letter, dated July 10, 1951, to Colonel Leitch from defendant was received in evidence and marked Government's Exhibit No. 21.)

The Clerk: Government's Exhibit No. 22 in evidence.

(Letter dated July 11, 1951, to Selective Service from defendant was received in evidence and marked Government's Exhibit No. 22.)

The Court: We will take a recess for a few minutes.

(Thereupon a short recess was taken.)

Mr. Karesh: I should now, your Honor, like to read into the record Government's Exhibit No. 21, letter to Colonel Leitch from Mr. Dickinson.

(Thereupon Government's Exhibit No. 21 was read to the Court.) [24]

Mr. Karesh: I should now like to read to your Honor Exhibit No. 22, letter to the Local Board 37 from the registrant and defendant George L. Dickinson, dated July 11, 1951.

(Thereupon Government's Exhibit No. 22 was read to the Court.)

(Testimony of Rose A. Brock.)

Mr. Karesh: And the records, your Honor, will reflect, though I am not offering it in evidence, a copy of the Watch Tower magazine dated February 1st, 1951—upon the cover it says: "Why Jehovah's Witnesses are not Pacifists." And "Pacifism and conscientious objection—is there a difference?"—and there are some other subjects on the heading of the magazine.

There is the notation here, "7/10/51, Registrant came into office and stated he would not be inducted on July 16 as he was taking this case to Court."

And there is a notation, "7/12/51, Board reviewed Form 150 (Spec. Cons. Obj.) and refused to open case."

Notation, "7/12/51, Case not reopened"—vote of three to nothing.

As exhibit next in order we should ask leave to offer in evidence a copy of a letter sent under date of July 12th, 1951, to George Lewis Dickinson with reference to its recent action.

The Court: Be admitted and marked.

The Clerk: Government's Exhibit 23 admitted and filed in evidence. [25]

(Letter dated July 12, 1951, from Local Board 37 to defendant, was received in evidence and marked Government's Exhibit No. 23.)

Mr. Karesh: U. S. Exhibit 23 reads as follows (reading Government's Exhibit No. 23 to the Court.)

Mr. Karesh: There is in the file, your Honor,

(Testimony of Rose A. Brock.)

and we would like to offer as an exhibit next in order letter written by George L. Dickinson to his Local Board.

The Court: Be admitted and marked.

The Clerk: Government's Exhibit 24 admitted and filed in evidence.

(Letter dated July 13, 1951, from defendant to Local Board 37, was received in evidence and marked Government's Exhibit No. 24.)

(Thereupon Government's Exhibit No. 24 was read to the Court.)

Q. (By Mr. Karesh): Incidentally, did the State Director of Selective Service stay the order of induction for the registrant to report July 16th?

A. No, he didn't.

Q. Or the National Director?

A. No, he didn't.

Q. There was no stay of induction, is that correct? A. No, there wasn't.

Q. And did the registrant report for induction as ordered and [26] was he forwarded to the induction station? A. He was.

Q. And you have an entry here: "7/17/51, Refused to be inducted into the Armed Forces."

You received a notice to that effect from the armed forces induction station; is that right?

A. That is right.

(Discussion between counsel.)

Mr. Karesh: It is stipulated, your Honor, that

(Testimony of Rose A. Brsek.)

while—I have no objection to the introduction—while the document is here, a copy of the letter from the Induction Office to the U. S. Attorney, it is stipulated that it may be received in evidence, and that if Fred R. McMahon, first lieutenant, infantry, induction officer, were here, he would testify to what is in this document. This document, copy of the letter to the United States Attorney, was sent to the Chairman of the Local Board 37 by Fred R. McMahon, first lieutenant, infantry, induction officer, who, it has been stipulated, was in charge of the induction of the draftees at the San Francisco Induction Station, 30 Van Ness Avenue, San Francisco.

The Clerk: Government's Exhibit 25 admitted and filed in evidence.

(Thereupon copy of letter, July 17, 1951, to U. S. Attorney from Induction Station, and letter from Induction Station to Local Board 37, dated July 13, 1951, were received [27] in evidence and marked Government's Exhibit No. 25.)

(Thereupon Government's Exhibit No. 25 was read to the Court.)

Mr. Karesh: And it is stipulated, counsel, I understand, that the defendant did report to the induction station and completed the process, with the exception that he was in the room, the ceremony was read, he was told that the step forward would constitute the transition from the civilian to the

(Testimony of Rose A. Brock.)

soldier, that his name was called, that he refused to step forward, that the ceremony was repeated by the induction station officer in San Francisco September 17, 1951; his name was again called, again he refused to step forward to make the transition from civilian to soldier—is that correct?

Mr. Covington: That is correct. Your Honor, we will so stipulate. As I stated, it was part of my statement.

The Court: The record will so show.

Mr. Karesh: If your Honor please, in view of the stipulation of counsel I believe it is unnecessary to place the agent on the stand who, as I said, would have testified the defendant indicated to him that he would refuse to be inducted.

Mr. Covington: Agree to it.

Mr. Karesh: I think it is unnecessary for us to put in the signed statement that he gave at the induction station.

Mr. Covington: I agree to that, too, your [28] Honor.

Mr. Karesh: And I think all the rest of the file—I believe—is immaterial, and it merely has to do——

Mr. Covington: I agree to that, save and except this Watch Tower magazine that the defendant submitted as the basis for his conscientious objection and supporting his special form for conscientious objector.

Mr. Karesh: I think it could be stipulated that it was—you may yourself offer it.

(Testimony of Rose A. Brock.)

Mr. Covington: I will offer it. But in this connection, may it please your Honor, I will agree with your Honor that there are no other material parts of the file. There are other papers in the file, but they are not material and we need not offer them in evidence because it would unduly and unnecessarily encumber the record.

The Court: Very well.

Mr. Karesh: That is the Government's case, your Honor.

Mr. Covington: May I cross-examine, your Honor? I just have a question or two.

The Court: Very well.

Cross-Examination

By Mr. Covington:

Q. Madam, do you have a recollection of this case from your own memory, or is it necessary for you to refresh it from the file?

A. I know it pretty well.

Q. You are familiar, of course, and personally acquainted with [29] this defendant?

A. Yes.

Q. This Watch Tower magazine that I hold in my hand I have taken from the file, and it does, does it not, appear as one of the papers in the file, please? A. Yes, it was in the file.

Q. And was that not submitted by the defendant upon the occasion that he presented his special form for conscientious objector to the Board?

(Testimony of Rose A. Brock.)

A. This was with the other letter there.

Q. Yes. The letter that he wrote to the Board explaining—— A. That's right.

Q. ——why he had not theretofore filed a special form for conscientious objector which Mr. Karesh has read—please?

A. Yes, it was attached. It was with that.

Q. And the Board, of course, considered that upon the occasion of whether or not they would reopen his case, is that correct? A. Yes.

Mr. Covington: Thank you.

May it please your Honor, we would offer that into evidence as Defendant's Exhibit No. 1, or whatever the designation may be.

The Court: Be admitted and marked next in order.

The Clerk: Defendant's Exhibit A admitted and filed in evidence. [30]

(The "Watch Tower" magazine, February 1, 1951, was received into evidence and marked Defendant's Exhibit No. A.)

Mr. Covington: May it please your Honor, there is nothing further from this witness.

(Witness excused.)

Mr. Covington: The Government having rested, I reserve the motion until the close of the defendant's testimony, your Honor.

The Court: Very well.

Mr. Covington: And if your Honor is ready to

proceed further, I am ready to put the only witness on the stand.

Will you please take the stand, Mr. Dickinson?

GEORGE LEWIS DICKINSON

the defendant herein, being first duly sworn, testified as follows:

The Clerk: State your full name to the Court.

A. George Lewis Dickinson.

Direct Examination

By Mr. Covington:

Q. Mr. Dickinson, will you please state your address and your occupation and your age?

A. I live at 247 Athens Street, San Francisco. I am a minister, and I am twenty-one years old.

Q. You say you are a minister. In what organization are you a minister?

A. I am privileged to represent the Watch Tower Bible and [31] Tract Society, Jehovah's Witnesses.

Q. Are you an ordained minister?

A. Yes, I am.

Q. Will you please tell us how long you have been a minister of Jehovah's Witnesses?

A. I have been a minister with Jehovah's Witnesses since 1947, and I was formally ordained as a minister April 10, 1949.

Q. And how long have you been acting as a full-time minister?

A. I enrolled as a full-time minister in August, 1949.

(Testimony of George Lewis Dickinson.)

Q. And that was before your first classification given by the Local Board on July 31, 1950?

A. Yes, it was.

Q. And then following your first classification by the Local Board on July 31, 1950, did you ever have occasion to go before the Local Board for a personal appearance?

A. Following my classification?

Q. Yes. A. Yes, I did.

Q. All right. Now what date was that, please?

A. That I went before—I can't remember exactly the date, but it was August or September of 1950.

Q. All right, sir. Now, was it on September 7, 1950, you theretofore having received a notice to appear, which was mailed by the Local Board on September 2, 1950? [32]

A. Yes, I appeared because of that notice.

Q. Did you have an opportunity to discuss any of the matters relating to your classification with the local Board then? A. Yes, I did.

Q. All right. Now will you please tell us what occurred upon the occasion of your appearance to the Local Board, beginning first with that which occurred first and ending last with that which occurred last?

A. I arrived at the Board in the evening of the day I was told to and at the correct time. The secretary asked me for my number—my Selective Service number. I produced the number and she obtained the file and probably she prepared it for

(Testimony of George Lewis Dickinson.)

the consideration. I was then instructed to await for the time my cause would be considered.

After a short while I was shown to the room where the case was considered and a person who was the chairman of the Draft Board administered an oath. I then sat down. At my left was the secretary. At the same table with myself was the chairman. Across the room were two other people, who were the rest of the Draft Board.

I told them that I had claimed exemption as a minister, and the first question that I was asked by the chairman, he said, "What education have you had for the ministry?" I told him that Jehovah Witnesses conduct a school of their own called the Theocratic Ministry School, and that we send [33] no minister forth without first giving him a very comprehensive education. The education is based upon the main textbook of Christians and that is the Holy Bible, such as I have here. We are also given textbooks that explain to us——

Q. Are you telling me, or are you stating what you told the Local Board?

A. That is what I told the Local Board.

Q. Bear in mind that I want you to state to the Judge only those things that you told to the Local Board when you give this testimony.

A. So then I further instructed the chairman that my education included delvings into other textbooks of Jehovah's Witnesses and that these textbooks took into such subjects as the history of the Bible, the history of Christianity, the history of

(Testimony of George Lewis Dickinson.)

religion, the geography of the Bible, the apology or explanation or the reasons for the authenticity of the Bible, and all these things I was pointing out was so that we could be well grounded and able to teach to others. Then we are given also a course on how to construct sermons. I explained to him that a minister must prepare his sermon, that it must be according to a definite outline, and be coherent, and that Jehovah Witnesses when they preach use reference materials. They have to be familiar with analytical concordances, large volumes, to familiarize themselves with the translation from the ancient languages of the Bible. Jehovah's Witnesses aren't [34] ignorant of——

Q. They are, you say?

A. They aren't. They are not.

Q. All right.

A. They are not ignorant of these things.

Q. Did you say that, that which you are telling now about, what you told the Board about your course of study? A. Yes.

Q. Still in answer to this question as to your preparation, is that right? A. Yes.

Q. Go ahead.

A. I went on to explain to them that our course covers not only the construction of a sermon but also the proper delivery of a sermon. The minister is taught how to gesture, how to project his voice, how to modulate his voice to make things understandable. Even body gesture and microphone technique are taught by Jehovah's Witnesses. All

(Testimony of George Lee Dickinson.)

this I was explaining to the chairman of the Board. And then Jehovah's Witnesses, I told him, were also given a practical education in how to deliver sermons. First of all Jehovah's Witnesses are assigned student talks. They are short discourses based on the Bible and that the student is counselled on how he is to deliver that talk. If he has had bad speech, it is marked on a speech conduct sheet. So that, as I explained to him, a witness could [35] study at home on these various subjects and prepare for his next assignment.

And then to further support the education of Jehovah's Witnesses I showed that they are given a practical experience calling on missionary assignments to various people's houses, and that an older, more mature Witness or preacher accompanies the new ones so that they can learn how it is done, how to call on persons and place literature with them, and that once that is done, how to call back on them and to stimulate that interest so they will want the knowledge of the Bible, and then to conduct with these persons Bible studies, and I explained to him that one of the major works of Jehovah's Witnesses is to conduct Bible studies with the people, to educate them in the Bible itself, the very foundation of Christianity.

Q. Was there any statement made as to the course of study covering such subjects as history and geography of the Bible and Bible chronology and also religious doctrines and history of Christianity?

(Testimony of George Lewis Dickinson.)

A. Yes. That is all included, and I explained to him that Jehovah's Witnesses are educated that way also, so that in the Bible the education of one of Jehovah's Witnesses is equal to, if not superior, than that that a person who was ordained in some other seminary would receive because we are not educated on the irrelevant things that they preach about; we are educated on the things that really count, the Bible itself, because [36] that is what we teach from.

Q. Is that the substance of all you told the Board? A. No, it isn't.

Q. With reference to your preparation and training and schooling for the ministry?

A. The next question he asked me was he had noticed on the letter that I sent to him requesting that personal experience that I stated there was an important modification in my vocation. I explained to him at the time I sent in the questionnaire, the classification questionnaire, in 1948, that I had been working as a radio technician, doing it full time, working on the swing shift, and doing the ministry only in the daytime. So then I explained to the chairman that I had let that job go, I had no further use for it, in May, after quitting that job about two months afterwards I took up the ministry as my principal vocation.

Q. And did you specify about what date it was that you quit the job that you have mentioned, the secular work, and undertook a full-time ministry?

(Testimony of George Lewis Dickinson.)

A. I don't remember the dates of being said there.

Q. All right. But did you point out at the time, though, that you appeared before them, that you had been then engaged and previous to that engaged in the full-time ministry?

A. Yes. Well, if you—explaining that I was officially ordained in not May but April, 1949, then I very soon became [37] enrolled by the headquarters of Jehovah's Witnesses as a full-time Pioneer minister, and that enrollment was in August.

Q. Well now, just a minute. On November 26th, 1948, you filed your questionnaire, at which time you said you were a regular minister, is that correct?

A. Yes.

Q. And then at the time you appeared before the Local Board you testified concerning your becoming a fully ordained minister, is that correct?

A. Yes.

Q. Now then, go ahead and tell us about that.

A. I explained to him that unlike the organizations that he may have been familiar with, to Jehovah's Witnesses ordination is in the ceremony of baptism. It is not—baptism is not, to one of the Jehovah's Witnesses, a mere profession of faith, but it is his commission or ordination—the words are synonymous—to go forth and preach to others and teach the things that He Himself cherishes so much. This was explained to him at that time.

Q. Did you mention anything about the date of your ordination on April 10, 1949?

(Testimony of George Lewis Dickinson.)

A. I don't remember if I told him the date, but I did tell him that I was ordained by baptism.

Q. And that there had been a change in your status in that respect? [38]

A. Yes. That was the important modification that I had referred to in that letter which requested the personal appeal.

Q. All right. Was there any conversation between you and any of the members of the Board with reference to vocation and regularity in work and any discussion in reference to your secular work?

A. In answer to a question, I explained the duties——

Q. You say in answer to a question. Tell us what the question was first.

A. The chairman asked me what were my duties as one of Jehovah's Witnesses and as a full-time Pioneer-Publisher, and I told him how that the—then I told him how a full-time Pioneer-Publisher devotes 100 hours to the work of getting acquainted with people at their doors, leaving with them Bible literature, calling back on those placements of Bible literature, stimulating that interest, converting into it a home Bible study, using the Bible and the Watch Tower Society publications. Then further that their work also included street work. They offered to the people passing along the streets copy of the Watch Tower magazine, such as the one that was displayed and is in evidence now, and I explained to him that people are very often prone to take these magazines and become interested in

(Testimony of George Lewis Dickinson.)

that way. It is just one of the means that we use to attract more interest to the important thing, God's word, the Bible. Then besides merely placing the [39] literature with people we do more than just peddle literature.

Q. Are you telling me what the Board was told?

A. I am explaining what I explained to the Board. I told the Board that we do not merely peddle literature, but we call back on that literature so that we can encourage the person who has it to become interested in it. We are not trying to sell literature. We are trying to use literature to help others.

Then I told him that in December, 1950, I received a letter from the Watch Tower Society. I showed him that letter. That letter was a request for me to transfer to another district to do my work. Because of transferring I was assigned to be the officer over a congregation of people in Coalinga, California.

Q. Yes.

A. The chairman asked me if I would like to submit that letter as part of the file. Then I told him that I would like to—I would like to keep that letter and two others, that I showed him, because I did not have copies of them, but I requested him to please study them over and consider them for his appeal. I did have another letter that I did give to him and that was the affidavit by C. D. Easter.

Q. That is the affidavit that Mr. Karesh has referred to, is that correct? A. Yes, it is. [40]

(Testimony of George Lewis Dickinson.)

Q. I show you three letters and I ask you to identify them, referring to them by date—or three documents—and telling what they are without reading the contents. I will read the contents later.

A. The one dated August 1st, 1949, is a letter to me from the Watch Tower Bible and Tract Society in Brooklyn, New York, notifying me that I had been enrolled as a full-time Pioneer-Minister and explaining what the duties of a Pioneer-Minister are and how that any secular work they may do for their livelihood is beneath the dignity or a lower calling or is to be kept—is not as important as dedicated purpose, their vocation of preaching.

Mr. Karesh: Is that for identification only?

Mr. Covington: Yes.

Mr. Karesh: We are going to make an objection to it.

The Clerk: Defendant's Exhibit B for identification.

Mr. Covington: For identifiention.

Mr. Karesh: For identification.

(Letter dated August 1st, 1949, Watch Tower Bible and Tract Society to defendant, marked Defendant's Exhibit B for identification only.)

A. The second is dated September 16, 1949.

Q. (By Mr. Covington): Explain about that, please.

A. From the Watch Tower Society headquarters in Brooklyn asking me if I would be willing to accept an assignment in a [41] different town, if I would move and take over responsibilities in this

(Testimony of George Lewis Dickinson.)

different town. And this other, dated January 3, 1950, from the Watch Tower Society in Brooklyn to the Coalinga congregation of Jehovah's Witnesses, is their notification that I had been appointed as their overseer.

The Clerk: Defendant's Exhibit C marked for identification; Defendant's Exhibit D marked for identification.

(Thereupon letters referred to above were marked Defendant's Exhibits C and D for identification only.)

Q. (By Mr. Covington): I hand you Defendant's Exhibits B and C and D for identification, being the letters that you have just now described, and ask you to tell the Judge what you did with those letters and whether or not you had them with you upon the occasion of your first appearance?

A. At the personal appearance when I was explaining to the chairman about my appointment as overseer and as the full-time minister, I showed to him these letters and requested him to read them, and he did examine them.

Q. Did he examine Defendant's Exhibit B?

A. Yes, he did.

Q. And did he examine Defendant's Exhibit C?

A. Yes, he did. He examined all of them.

Q. And did he examine Defendant's Exhibit D?

A. Yes.

Q. All right. Now tell us what was done with them, what you [42] said and what he said in respect of those letters?

(Testimony of George Lewis Dickinson.)

A. I showed him this letter, Exhibit B, for his inspection, and told him that this letter contained my official appointment as a full-time minister of the Watch Tower Society, and it reads, this letter——

Mr. Karesh: Just a moment.

Mr. Covington: Hold on—just a minute. You say the letter reads, but now you can't tell what the letter reads. Mr. Karesh objects to that. You can only tell what you said and what he said in respect to that letter and whether or not he read the parts that you are now identifying or referring to.

A. He read it very quickly. I told him what the letter was, but did not read anything to him from it.

Q. Did you tell him the contents of it?

A. Yes, I told him what it was, yes.

Q. Did you offer the letter to him?

A. I offered it to him only for his inspection, because I wanted to keep the original and I had no copies.

Q. Is that true also of the other two exhibits?

A. Yes, it is.

Q. Did he read the other two, Defendant's Exhibit C for identification and Defendant's Exhibit D for identification?

A. Yes, he very carefully read Exhibits C and D.

Q. He read them all over. Was there any discussion between the two of you in reference to those two exhibits? [43]

A. No, sir, there was no discussion about these.

Q. But he did read them, is that true?

(Testimony of George Lewis Dickinson.)

A. Yes.

Q. He did read them?

A. He did read them and he seemed to acknowledge that as the fact, that I was a full time minister.

Q. What do you mean, he seemed to? If he didn't say anything, how can you say he seemed to?

A. Well, appeared to me that he was satisfied.

Mr. Karesh: He appeared to you what?

A. He just appeared to me to be satisfied.

Mr. Karesh: That is a conclusion. I don't know how, if he didn't say anything, how he can appear to him to be satisfied. I move the answer be stricken.

The Court: Why do you think he was satisfied?

A. Well, he seemed to affirm the truth of what was said in the letter.

The Court: In what way?

A. Well, by gesture.

The Court: By gesture, what do you mean by that?

A. A nod of the head.

The Court: Proceed.

Q. (By Mr. Covington): There was no objection or contradiction or questioning about the authenticity or the truthfulness of these letters, is that correct? [44] A. No, there wasn't.

Mr. Covington: May it please your Honor, in view of the testimony of the defendant, the defendant now moves for admission of defendant's Exhibits B, C, and D for identification.

Mr. Karesh: Now, your Honor, since the Court has to decide this case upon the basis, we respect-

(Testimony of George Lewis Dickinson.)

fully urge, the file, the defendant cannot prove by any act of omission of his own, and since they asked him for the documents and he refused, he said he didn't want to give them to him, the Government certainly is not chargeable with these documents, and we register an objection. They were never offered when he was asked to offer them to the Board, and we make the objection on that ground, your Honor.

The Court: The matter is submitted?

Mr. Covington: Sir?

The Court: Submitted?

Mr. Covington: Yes, your Honor.

The Court: Objection sustained. You can develop the conversations had in reference to them.

Mr. Covington: Now was there any further conversation in respect of those three documents?

A. Yes. He asked—not in respect to those three documents.

Q. All right. Now then, will you please tell us what further conversation was had, that you can remember of, between you [45] and the Chairman, the members of the Local Board, and anything that they said and anything that you said?

A. Yes. After showing him these documents, he then——

The Court: Is this the Chairman?

A. The Chairman, yes.

Q. (By Mr. Covington): All right.

A. He asked me if my work was confined to missionary work. He said, "Do you preach in a

(Testimony of George Lewis Dickinson.)

church?" I answered, "Yes, I do," that Jehovah's Witnesses, I told him, maintain a hall in the main part of Coalinga, and that at this hall are conducted three meetings a week and sometimes four, and that it was my duty to preside at each one of those meetings each week. I arranged for them and delivered the discourses for most of them.

Q. Was there any conversation about your capacity to perform the ordinary functions that are performed by any of the other ministers?

A. No, he did not doubt that I did that work.

Q. That is not my question. I asked, was there any statement made by you or by him on that subject?

The Court: Any further statement made, anything said?

Q. (By Mr. Covington): On the subject of your standing before the congregation as an ordained minister as do the Orthodox clergy. Now then, was there any conversation along that [46] line?

A. No, that was all that was said on that subject.

Q. All right. You did tell him, however, that you acted as the presiding minister over four meetings a week before the congregation in the Kingdom Hall—that is the meeting place, is that correct?

A. Yes, sir.

Q. Was there any further conversation in respect to your missionary work as a Pioneer or your work as the presiding minister known as Company Servant or School Servant?

(Testimony of George Lewis Dickinson.)

A. Yes, there was more in that respect. I explained to him that my duties as a Company Servant, I said——

Q. What do you mean by the term "Company Servant"?

A. That is the name that the Society has given to the minister in the Company, in the group that meets together, that oversees the work of the others. The assignment—the territory assignment for the Coalinga company or congregation of Jehovah's Witnesses was 5400 miles.

Q. All right.

A. It was my duty to see that those missionaries that were associated with me and with the company had a proper distribution of the territory so that everyone in that entire 5400 square miles district had the opportunity to know about our work and to attend our meetings which were given for their benefit.

Q. All right. Go ahead. [47]

A. Then I told him that as a Pioneer my duties were to participate in that service with them. Then also I was appointed by the Society, as was shown by that Exhibit D, I believe, that I was the school servant for the company, that in this Theocratic Ministry School where Jehovah's Witnesses are taught about the Bible, the related subjects of history, that I was the one that counselled the students, gave them their assignments and instructed them to encourage them in improving their manner of speaking and manner of studying.

(Testimony of George Lewis Dickinson.)

Then one of the other members of the Board, he said, "Are you paid or given a salary by Jehovah's Witnesses for doing this work?" I told him that none of Jehovah's Witnesses are paid in this country for doing their work.

"Well," he said, "then how do you earn your material things to continue in this work?" I told him that I was a radio man.

Well then he asked me, "How much money do you make as a radio man?" I told him that I made about $35 a month doing that work and that I worked about five hours a week at it, that my duties as a minister often involved contacting about 300 persons a month and spending 150 hours dedicated solely to the work of God, a 100 hours in the missionary work plus studying and giving discourses at the meetings.

The Court: We will take the noon recess.

(Thereupon an adjournment was taken until 2 o'clock p.m.) [48]

Monday, October 8, 1951, 2 o'Clock P.M.

GEORGE LEWIS DICKINSON resumed the stand, previously sworn, testified further as follows:

Direct Examination
(Resumed)

By Mr. Covington:

Q. Mr. Dickinson, when we took the noon recess you were talking about what you told the Board in reference to your vocation and also dealing with the secular work as compared with your full time ministry. Will you take up from there and tell us what additional things you told the Board, and what they said to you while you were appearing before them and had this hearing that you have mentioned?

The Court: Fix the time.

Q. (By Mr. Covington): That was on September 7th, 1950. A. Yes.

The Court: Very well.

A. I told the member of the Board who questioned me and who asked me about my salary that I earned $35 a month by doing part time radio repair work whenever I had the opportunity and I averaged about 5 hours per week in doing the radio work and the $35 I earned from that on an average paid my bills.

Then the chairman said that he didn't think it was possible for a person to live on $35 a month. So I explained to him that my rent was very rea-

(Testimony of George Lewis Dickinson.)

sonable. I had been provided [49] an apartment for only $15 a month and that by doing my own menial tasks and laundry, doing my own cooking and with being invited out to other people's houses and with a little assistance they would generously give me, why, $35 was plenty, and even I could get along on less than $35 a month.

Then the member of the Board said that he thought that it would be wrong for a person to claim that he had as his vocation the ministry and not receive that money as paid for it. He said that he thought that a person that had a vocation was paid for doing whatever that vocation was. So I explained to him, suppose a person were financially fixed, suppose he were a millionaire and he refused a salary from the church, he would still be a minister and doing the work of a minister, that would still be his vocation. And also I told him about the Scripture parables of the Apostle Paul. I said to him how the Apostle Paul said, the Ninth Chapter of First Corinthians, said that he had authority to reap from the persons or the congregation their material things because he had sowed to them spiritual things. He said but yet he did not abuse his authority. Instead of abusing the authority, he said, that while declaring the good news——

The Court: Just a moment——

A. ——I may furnish it without cost.

The Court: What are you reading here?

A. That's a Bible. [50]

(Testimony of George Lewis Dickinson.)

The Court: Did you have it with you there at that time?

A. No, I didn't have it, but I referred to the Scripture.

The Court: Then you don't have it here at this time.

A. So I explained to him that the Apostle Paul instead of burdening the congregation with his material cares, instead he told them that he would not want to burden them down, he would like to furnish them the good news without cost, and he made tents for his living.

Now, if an Apostle can do that, why can't I, a lowly Christian minister, in this period of time do that very same thing? The 150 hours a month in the Ministry is hardly outbalanced by the 5 hours a week that I would do to support myself.

Q. (By Mr. Covington): Well, when you told him about the 150 hours a month did you mean to tell him that that is all you devoted to your ministry or did that include study, too?

A. Well, the ministry, I had explained to them, was 100 hours a month, from door to door, calling back on people who had taken literature and started studies with them, that was the 100 hours, plus your study.

Q. Did you talk to him about the time devoted to study and also the time devoted to the platform preaching at the congregation?

A. Yes, I told him very detailedly about my

(Testimony of George Lewis Dickinson.)

work on the platform and preparing for [51] discourses.

Q. Did you mention at that time as being in addition to your door to door missionary work?

A. Yes.

Q. And what did you say with reference to comparison about the number of hours for the total of the study and the platform preaching?

A. That the number of hours that I spent supporting myself would be spent by an ordinary minister in his leisure time, that I just kept busy and supported myself that way.

Q. Did you show that you spent hours in addition to the 100 hours devoted to this platform preaching and studying, preparing for the platform delivery of sermons?

A. Yes. And then I told him, well, why is it that Jehovah's Witnesses who do all this work, why aren't they treated like the ministers that are recognized by more people. Certainly we are all doing the same work. I told him that I had knowledge that they had previously classified other ministers 4-D, which they deserved.

The chairman said, "How did you know that? How did you know that we classified others as 4-D?"

I told him that I had spoken to another one of Jehovah's Witnesses who had appeared for a hearing just a little while before.

Then the secretary, who was taking notes, said, "You mean Fred Mays?" I said, "Yes, Fred Mays." She said, "Well, [52] for your information,

(Testimony of George Lewis Dickinson.)

he was classified 1-A this morning, and he deserved it."

Then the chairman of the Board said, "Yes, we sent 4,000 of you boys off to prison in the last war."

So I said, "Yes, but there were additional thousands who were justly classified as ministers, that a minister, under the law, is a person who, first of all, regularly devotes his time to the ministry. Second of all"——

Mr. Karesh: That's what you told them? Excuse me, counsel. Is that what you told them?

A. Yes. I told them, secondly, from my file that secondly—that secondly he had to be recognized by an organization, and, thirdly, the organization had to be a recognized religious organization.

The chairman said, "That will be all, Mr. Dickinson. You can leave now."

So I said, "I would like to tell you also that that information is contained in my affidavit that was submitted along with the questionnaire."

He said, "Well, thank you very much, Mr. Dickinson."

Then I said, "That is also contained in the affidavits signed by C. D. Easter, that I brought with me before. I wish you would consider that before you classify me."

So then I said, "Thank you" and left.

Q. (By Mr. Covington): Well, now, was this material that you [53] gave them upon the personal appearance additional material over and above what appeared in your file in writing?

(Testimony of George Lewis Dickinson.)

A. Yes, sir.

Q. I show you the Government's Exhibit No. 4 and ask you to look at it. It has been identified as a memorandum made by the clerk while you were having your hearing. Please look at that and explain what, if anything, you said in reference to the points covered there different from or in addition to what you have already told the Court?

A. When I came before the appeal—not the appeal—before the draft board for my personal appearance and saw the secretary taking notes, I thought they were stenographic notes, but they were very brief. It just says, "Public building where he preaches." That is true, I do preach in a public building as well as my other ministry.

Then it says: "Has not been ordained." That is not the truth because I explained to them that I had a change in my vocational status.

Q. Well, your questionnaire showed that you had not been ordained at the time you filed it in, '48?

A. That's probably where she got this information because I explained that baptism was ordination to Jehovah's Witnesses.

Q. And you have heretofore testified at some considerable length about the testimony you gave concerning your ordination on baptism upon that occasion? [54] A. Yes.

Q. Did you explain that that *had* been a change after your filing of your questionnaire?

A. Yes.

Q. So to that extent that memorandum reflects

(Testimony of George Lewis Dickinson.)

what appears in your file but not what you told them orally, is that correct? A. Yes.

Q. That Government Exhibit No. 4 about ordination, Sir?

A. Well, would you please say that again?

Q. I say, Government Exhibit 4 is true in respect to what appears in your questionnaire on ordination but it is not true according to what you told them, isn't that correct? A. Yes, sir.

Q. All right. What else have you got to say about that?

A. Next she says, "Devotes his full time to the work of preaching." That is right.

Q. Well, is there anything else there?

A. Yes. It says: "Supports himself through this work." That is mistaken because I told them that my support came through other work, side work that was secondary to the important work of preaching. I was not paid for doing the work of preaching. That is an inaccuracy.

Then all it says after that is "Jehovah's Witness."

Q. All right. Now will you tell us whether or not that [55] memorandum, Government's Exhibit No. 4 that you hold in your hand, in any extent contains a memorandum of the material you gave them upon the occasion of your personal appearance?

A. No. We spoke together for about an hour. This, little six lines, whatever it is, could not possibly have been an accurate report of it.

Q. Was there any discussion between you and

(Testimony of George Lewis Dickinson.)

the members of the Board in respect to the term used in the law about a regular ministerial avocation and vocation in a recognized organization, that you recall?

A. Well, I defined the law and explained to them that I met the requirements as both regular and an ordained minister. We discussed that insofar as that.

Q. You responded in order to comply with the law respecting the command to appear at the induction station, is that correct? A. Yes.

Q. You did appear there and you heard the stipulation that I made with Mr. Karesh for the Government and me for you about your refusing to be inducted there, is that correct?

A. That's correct.

Q. And why is it that you refused to be inducted, please?

A. It is because the draft board did not fairly classify me. I was not—I did not think that I was legally—had the liability to comply all the way through with that order because the action of the draft board was illegal in classifying me in [56] a class in which I didn't belong.

Mr. Covington: That is all, your Honor.

Cross-Examination

By Mr. Karesh:

Q. So it is your statement that the draft board acted illegally in classifying you? A. Yes.

(Testimony of George Lewis Dickinson.)

Q. That is why you did not report?

A. I did report, sir.

Q. That is why you refused to submit for induction? A. Yes, sir.

Q. I presume that the Board of Appeal action was the same, they didn't act lawfully in classifying you, and that's another reason you didn't submit to the induction? A. Yes, sir.

Q. And I presume because the Presidential Board of Appeals did not defer you, you claim that that's an unlawful action, that's another reason why you didn't report? A. Yes, sir.

Q. So it is your statement that the Draft Board by unanimous vote and the appeal board by unanimous vote and the Presidential Appeal Board by unanimous vote all acted unlawfully in classifying you, is that correct? A. Yes.

Q. It is your contention that the notation of the personal appearance does not correctly reflect what took place at that [57] hearing, is that right.

A. Yes, sir.

Q. But in any event when you wrote General Hershey, copy of which you sent to the Board, you told General Hershey everything you told the Board that day at the personal appearance?

A. No, sir, not everything.

Q. Well now, let us look at the copy of the exhibit to General Hershey and let's see which things you didn't do. Now, look at this letter, Government's Exhibit 11. Tell me where in there did you leave anything out that you told the Board.

(Testimony of George Lewis Dickinson.)

You told General Hershey you were a Pioneer, didn't you?

A. Yes, I did, but I did not mention the education.

Q. Look in that letter and tell me if there isn't mentioned your education?

A. It is not mentioned at all, that I can notice, sir.

Q. You told the Board of Appeal, however, about your education—did you not—the local Board of Appeal, not the Presidential?

A. Yes, I did, I told the Local Board.

Q. So, in other words, when the file got up to the Presidential Board of Appeal everything that you contended as reason for your deferment as a minister was in your file? [58] A. No.

Q. What was it that the Presidential Appeal Board did not have about you?

A. All they had was six lines on that personal hearing and that was hardly sufficient. It left out so many things.

Q. Well, I am not saying about that. I am asking you, what was it that the Presidential Board of Appeal did not have from you that completed your claim?

A. They didn't have an accurate record of what happened at the hearing.

Q. With the exception of what you say did happen at the Board of Appeal, what else? You supplied all that information to the Board of Ap-

(Testimony of George Lewis Dickinson.)

peal and to the Presidential Board of Appeal, did you not?

Mr. Covington: May it please your Honor, I object to that as calling for the conclusion and argumentative. If he wants to call for an opinion, then I think the registrant ought to be given an opportunity to compare the writings with the memoranda and the oral testimony, and that is a matter for the Judge to perform in this case rather than the witness, if your Honor please.

Mr. Karesh: Well now, I think you asked the statement whether his file was complete—I think something like that.

Mr. Covington: I am not saying that, but the law is, counsel, as I understand it, assuming there was some lack in [59] the personal appearance, if the Appeal Board hasn't furnished him—I don't agree what he told the Presidential Appeal Board, say General Hershey, would cure any defects on the part of the local Draft Board in sending a case up to the Board of Appeal. I do not admit this, however, that if a statement in writing was filed by the registrant following his personal appearance and before the appeal was sent up to the Board of Appeal, Local Board of Appeal, covering each and every item that had been omitted, specifically covering it, then what counsel is saying would be true, but we do not have an appeal statement filed in this case that covers all these points. Obviously this registrant did not have before him the entire file for an inspection before he wrote his letter of ap-

(Testimony of George Lewis Dickinson.)

peal, and for that reason I respectfully decline to agree with counsel that a letter to General Hershey would cure the matter which was long after the Board of Appeal had made its determination.

Mr. Karesh: We are here, your Honor, to determine whether or not the Presidential Board of Appeal acted, since it was the highest group that acted—we are not here to test the Local Board——

The Court: The record will have to speak for itself.

Q. (By Mr. Karesh): You want us to believe that the Chairman said to you something about 4000 Jehovah's Witnesses being sent to prison?

A. He did, in a very forceful manner.

Q. He was very unfair to you—didn't treat you right? [60]

A. No, that was the only—he was very objective in everything that he did. That was the only time he raised his voice.

Q. I thought you said somebody else said, "What about the Mayes case, that boy that was put in 1-A?" A. That was only the secretary.

Q. Of course you remember when you wrote this letter here on July 11th, when they permitted you to file a conscientious objector form, you recall you told them how fair they were, didn't you? Did you bless—you said "God's blessings" on them, didn't you—isn't that right?

A. Where does it say how fair it was? Oh—"In conclusion, I want to express my appreciation once again for your very fair action in considering

(Testimony of George Lewis Dickinson.)

this case again at this time." In other words, as for a conscientious objector—they told me at the local board that they would consider once again my case, that they would consider my claim for conscientious objection. When I wrote this letter I thought they were going to consider it, so—or at least I was told that they did consider it, but did not agree with my conclusions. But when I said "God bless you," I am having in mind the words that Christ said when he said "Pray for those that persecute you and bless those that hate you."

The Court: What is the date of that letter?

A. This is July the 11th, 1951.

The Court: Did you send that?

A. Yes. [61]

The Court: Who prepared it for you?

A. I wrote every one of those letters myself.

The Court: You typed it?

A. Yes.

The Court: You addressed that to the Board, did you?

A. Yes, sir.

The Court: All right.

Q. (By Mr. Karesh): Now let me get this straight, this failure to file your CO form in time was because you were a bit confused with the difference between a conscientious objector and a pacifist, is that one of the reasons?

A. One of the reasons for what?

Q. The reason you didn't file your conscientious

(Testimony of George Lewis Dickinson.)

objector form way back originally when you filed your questionnaire?

A. Yes. I was confused as to the difference between conscientious objection and pacificism.

Q. When did you get unconfused?

A. When I studied on the subject more thoroughly and found out that a person that is a pacifist does not agree to violence in any form but then a conscientious objector objects to any violence when it is not authorized by God. That is my feeling and I have always had that feeling. My conscience has always been the same on that.

Q. Well, isn't it true the thing is that what you wrote in this letter that you thought you wanted to get a ministerial [62] classification so you didn't bother filing a conscientious objector claim, isn't that true?

A. I would have sooner filed my conscientious objector claim if I had known that I would not be given an exemption as a minister.

Q. And when you didn't get that, then you decided, well, now you better try to be a conscientious objector, isn't that right?

A. No. I say, it is time to make known my objection to violence.

Q. Didn't the Board treat you quite reasonably at your personal appearance, weren't they quite nice, very fair to you?

The Court: The record discloses already he stated so.

(Testimony of George Lewis Dickinson.)

Q. (By Mr. Karesh): That is true, isn't it? You said so in your letter here. A. Yes.

Q. That they were very reasonable?

A. Yes, sir, they were.

Q. At the personal appearance. Now, when you wrote this letter did you already inspect your draft file on July 11th? A. No.

Q. When did you first look at your draft file?

A. I believe it wasn't until—well, now, I would know for sure when I first saw my draft file. I never did read everything [63] through in it over again.

Q. You mean when you look through your draft file you didn't look at it very carefully?

A. I just wanted to make sure whether or not there were any transcripts of a hearing there.

Q. And did you find that?

A. No, I didn't find the transcript I was looking for.

Q. You found that slip of paper here which says "public building where he preaches; has not been ordained; devotes his full time to the work of preaching; supports himself through this work; Jehovah's Witness"—you saw that in the file, right?

A. Yes, I did see that.

Q. When did you see that for the first time?

A. The day I picked up my form 150.

Q. Fine. And yet after seeing this and reading it you thereafter write the board a letter and tell them that everything was reasonable when you had your personal appearance?

(Testimony of George Lewis Dickinson.)

A. I said they were reasonable at the appearance. I didn't say the transcript was accurate.

Q. Having seen this, having seen Government Exhibit 4, why, in writing this letter later on, July 11th, didn't you tell them: "Sirs, that slip of paper with the results of my personal appearance is not complete"? Why didn't you write that in the letter?

A. Because I didn't realize it at the time. [64]

Q. You didn't realize it at the time?

A. No, I didn't.

Q. What do you mean you didn't realize it at the time? You realize it now?

A. I didn't realize 'till Sunday night what the meaning of that slip was. I never read it thoroughly.

Q. Well, you were looking for this when you went to the Board?

A. I wasn't looking for those notes. I was looking for the transcript, a thorough, word-for-word transcript of the whole thing.

Q. And you say the Board has written wrongly when it says here you have not been ordained?

A. Yes.

Q. Now did you tell the Board at the personal appearance the number of hours that you put in?

A. Yes.

Q. A hundred hours, you told them, doing what?

A. A hundred hours of the evangelists work and door-to-door, calling back on people, plus the time of studying, delivering discourses, writing letttors.

Q. All Jehovah's Witnesses, do that, don't they?

(Testimony of George Lewis Dickinson.)

A. No.

Q. Did you tell them how much time you devoted to preaching? A. I just said.

Q. How much? [65]

A. A hundred and fifty on the average.

Q. You mean a hundred hours going from door-to-door and a hundred and fifty hours additional or a total of a hundred and fifty?

A. The door-to-door work is preaching. In addition to that an average of fifty hours delivering discourses, preparing for them, writing letters.

Q. Did you tell them how many sermons or writing discourses you gave a week?

A. Yes. I told them I gave three or four sermons a week.

Q. Where at, in the public hall?

A. At the public meeting place, plus the Bible studies I conducted at people's homes.

Q. Did you tell them the names of some of your sermons that you gave?

A. No, they never asked me for any.

Q. Well, did you tell them that you officiated at weddings? A. No, I didn't.

Q. Do you officiate at weddings?

A. I have the ability to, if I wish to, but I haven't had any one request me to do that.

Q. You don't have lawful authority under the laws of the State of California to do it?

A. Yes, I believe I do, but I haven't applied for a permit to perform marriages, yet. [66]

Q. Where do you apply for the permit?

(Testimony of George Lewis Dickinson.)

A. I haven't inquired.

Q. What?

A. I don't know where I would apply. I haven't inquired.

Q. Then you told the man about the work you were doing on the radio, radio work? A. Yes.

Q. You told them you were only making thirty-five dollars a month? A. Yes.

Q. And that you weren't making anything from preaching? A. That's right.

Q. And were you dressed just as nicely as you are now? A. Yes.

Q. And you told them that you dress that nicely on thirty-five dollars—— A. Yes.

Q. ——a month? A. Yes.

Q. You ate and got lodging on thirty-five dollars a month? A. Yes.

Q. And you said you told them you paid fifteen dollars a month for your room? A. Yes.

Q. That is what you pay? [67]

A. Yes. Well, the rent was increased shortly after to $17.50.

Q. In any event, you refused to be inducted?

A. Yes.

Q. Of course, you say the Board's actions——

A. The Board's actions are what, sir?

Q. You claim the Board's actions are illegal?

A. Yes.

Q. You weren't thoroughly classified?

A. I wasn't thoroughly classified.

(Testimony of George Lewis Dickinson.)

Q. Did you tell the Board that any member of Jehovah's Witnesses, every member, was entitled to a ministerial exemption?

A. I explained to them that Jehovah's Witnesses are not organized as a church would be organized but that the word "Witness" means "testifier," and people that testify of Jehovah preach. Therefore Jehovah's Witnesses constitute a society of ministers, some working part time, some working full time. In my case it was full time, and none of Jehovah's Witnesses are called Jehovah's Witnesses unless they do preach. There is a record kept of their activity. If they irregularly or incidentally preach, they are not classified as Jehovah's Witnesses. They call them good will people to whom we preach.

Q. In other words, you told them that every member of Jehovah's Witnesses is a minister, isn't that what you told them? [68] A. Yes.

Q. Therefore, entitled to deferment as such?

A. Yes, exemptions.

Q. I notice here in your questionnaire you said you were employed by the United States Navy when you filled out this questionnaire, right?

A. I said I was employed by the Navy or by the Watch Tower Society?

Q. No: "My employer is the United States Navy, San Francisco Naval Shipyard, Hunters Point."

A. Under vocation I always put down "Minister" but that I meant that to be secular work. At

(Testimony of George Lewis Dickinson.)

that time I was not a full time minister but part time.

Q. When did you become a full time minister?

A. On August 1, 1949.

Q. When was that? A. August 1, 1949.

Q. And you quit working for the Navy?

A. I had quit several months before that.

Q. Did you tell that to the draft board, that you quit working for the Navy? A. Yes, sir.

Q. Is that at the personal appearance?

A. Yes, sir.

Q. And since you quit the Navy you were only making an average [69] of thirty-five dollars a month? A. Yes, sir.

Q. Since 1949?

A. Well, since the latter part of 1949, yes.

Q. You have no other work except occasional radio work at night? A. That's right.

Q. Nothing else, is that right?

A. That's right.

Q. And you have averaged thirty-five dollars a month? A. About.

Q. Your room rent is $17.50 now?

A. Yes, sir.

Q. You get along on the balance of $17.50?

A. Yes.

Q. Did you tell all that to the Board?

A. Yes, sir.

Q. You told all that to General Hershey?

A. No, sir.

(Testimony of George Lewis Dickinson.)

Q. They gave you a presidential appeal, didn't they? A. Yes.

Q. Even though no Board of Appeal member dissented? A. Yes.

Q. So they treated you pretty nice, didn't they?

A. Yes. [70]

Q. When they decided against you you say they acted unlawfully, right? A. Yes.

Q. If they decide in favor of you, they act lawfully, is that right?

A. In this case it would be right.

Q. In this case or in any case involving a member of Jehovah's Witnesses? A. It depends.

Mr. Covington: That is objected, may your Honor please, as argumentative. Other cases are not relevant, I don't think.

The Court: The objection will be sustained.

Mr. Karesh: That is all, your Honor.

Mr. Covington: Just one question.

Redirect Examination

By Mr. Covington:

Q. Was the work that you were performing at the Navy Yard military work or was it civilian work?

A. It was civilian work. I was repairing some old battered equipment that had rust all over it, and there was no war at the time or anything like that.

Q. And, in any event, at the time you actually appeared before the Board for a hearing following

(Testimony of George Lewis Dickinson.)

your first classification you were a full time minister, is that correct? A. Yes, sir.

Mr. Karesh: Well that is counsel's [71] conclusion.

Mr. Covington: All right.

Q. Did you tell them that you were a full time minister and had quit working at the Navy Yard?

A. Yes, sir.

Q. How much time or how long a time before you appeared had you discontinued working at the Navy Yard, according to what you informed them?

A. I can't recall the dates, sir.

Q. Approximately.

A. It was about a year and four months after I had quit until the time that I had my appeal. I can't remember exactly,—not appeal, but appearance.

Q. And so you made that plain to the Board, is that correct? A. Yes.

Q. At the time? A. Yes.

Mr. Covington: Nothing further.

Mr. Karesh: That is all.

The Court: Step down.

ROSE A. BROCK

recalled as a witness on behalf of the Government, previously sworn.

Cross-Examination
(Continued)

By Mr. Covington:

Q. I show you Government Exhibit [72] Number 4 and ask you to tell us by whom that was prepared? A. That was prepared by me.

Q. Upon the occasion of the personal appearance? A. That's right.

Q. And what is it?

A. You mean I should explain?

Q. Yes. I would like to hear from you.

A. Well, these are the minutes of the personal appearance.

Q. That's the memorandum that you made at the direction of the Board? A. That's right.

Q. Something showing what took place, is that right? A. That's right.

Mr. Covington: That is all.

Redirect Examination

By Mr. Karesh:

Q. Were you present at the meeting?

A. I was.

Q. Was anything said about another boy's case, the Mays case? A. Not to my recollection.

Q. Or four thousand Jehovah's Witnesses going to jail or something like that?

(Testimony of Rose A. Brock.)

A. Not to my recollection.

Q. You would remember that if it happened?

A. I would, yes, but I don't recall that at all.

Q. Is it your testimony that it didn't [73] happen?

A. I would say that it didn't happen. Not to my recollection, it didn't happen. We weren't discussing any other case but this case.

Mr. Kaveh: That is all.

Recross-Examination

By Mr. Covington:

Q. How many other personal appearances have you been before the Board since you—that you attended since that time?

A. Well, I attend all the personal appearances.

Q. Well, now, can you remember what occurred on the other personal appearances?

A. Well, if I look at the file, yes.

Q. Well, are you telling the Judge that this boy told a falsehood when he said the Board members said that four thousand Jehovah's Witnesses had been sent to prison in the last war?

A. I don't recall him saying that.

Q. Now that is not the question. Are you telling the Judge that he didn't say or it couldn't have been said without you remembering it?

The Court: The testimony stands in the record that she has no recollection of that incident.

Mr. Covington: All right.

The Court: If I am in error, you may correct me with your further examination. [74]

Mr. Covington: That is all.

(Witness excused.)

Mr. Covington: That is the defendant's case, your Honor.

Mr. Karesh: That's the Government's case.

Mr. Covington: At this time then the defendant makes a motion for judgment of acquittal. Now comes the defendant at the close of all of the evidence and moves the Court to render and enter a judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure for the following reasons:

1. The evidence is insufficient to sustain a conviction for a violation of the Selective Service Act of 1948, as amended.

2. The undisputed evidence shows that the 1-A classification is arbitrary, capricious, and without basis in fact.

3. The draft boards acted arbitrarily, capriciously, and without basis in fact and in the teeth of the undisputed evidence showing that the defendant was a minister of religion engaged in teaching the principles of a recognized religious organization as his vocation when the Board put the defendant in Class 1-A, ordered the defendant to report for induction, and refused to place the defendant in Class 4-D.

4. The local board acted arbitrarily and capriciously and abused this discretion when it refused

to grant the defendant's request to re-open and reclassify him urged by filing his conscientious objector's form following the efforts [75] to get a review before the presidential—following the presidential appeal, and which special form for conscientious objector and the letter accompanying same was considered by the Board and reopening denied.

5. The local board denied the defendant due process of law contrary to the Fifth Amendment and Section 1624.1 and 1624.2 of the Selective Service Regulations and a full and complete and fair hearing before the Board of Appeal and the presidential appeal board upon the claim of the registrant for exemption as a minister of religion because it failed to reduce to writing adequately and fully all of the oral testimony that was given by the defendant in addition to the material in his file which was with the Board when he testified before them upon his personal appearance as is required by the regulations for the conduct of personal appearances, which oral testimony does not appear in any of the written material in the file of the registrant which has been received into evidence.

The Court: What is in the regulations in relation to keeping a file? Read the language.

(The Regulation was read, and cited to the Court.)

Mr. Covington: My additional grounds for motion for judgment is the sixth ground, if it please the Court, that if the defendant is convicted in the

face of the record made in this case and upon all the facts and circumstances developed [76] as well as the taking into account the order denying the request for a subpoena to command the presidential appeal board members to appear here, which we requested in the form and manner required by law, that the Act and Regulations will be so construed and applied as to bring them into conflict with the Fifth and Sixth Amendments to the United States Constitution which deny due process of law and also the right to confrontation of the witnesses that are responsible for this man's ultimate appearance before this Court in defense of the indictment.

(Argument upon the motion.)

The Court: I don't agree with your theory of the case at all. For that reason the motion will have to be denied.

Mr. Covington: All right, your Honor. I take exception to the ruling of the Court.

The Court: The record will so show.

Mr. Covington: Does that mean that the judgment in favor of the Government will be rendered?

The Court: If both sides have submitted.

Mr. Karesh: Yes.

Mr. Covington: Our side has been submitted.

The Court: The Government?

Mr. Karesh: Submitted.

Mr. Covington: Now, your Honor, we are ready for sentence if there be a judgment. [77]

The Court: Wait a minute. I haven't come to that yet. I will enter a judgment of guilty as charged.

Mr. Covington: All right. We are ready for the pronouncement of sentence. This young man has no record and I see no reason to refer it to the Probation Department.

Mr. Karesh: He has no record.

Mr. Covington: I am from out of town, your Honor, and I would like to get this——

The Court: Are you familiar with the history of this young man?

Mr. Karesh: This is what you'd call a typical case of a member of the Jehovah's Witness who having lost out seeking to get deferred, but the Board turns him down,——

The Court: Do you know anything about the history of this young man?

Mr. Karesh: No, I know nothing.

The Court: Let the young man take the stand—to obviate the necessity of you coming back. That is the only reason I am doing this. Is that agreeable with you?

Mr. Covington: Yes.

The Court: If not, I wouldn't do it.

Mr. Covington: I want to abide by the Court's suggestion.

GEORGE LEWIS DICKINSON

recalled as a witness in his own behalf, previously sworn. [78]

Examination by the Court

Q. Your full name?

A. George L. Dickinson—George Lewis Dickinson.

(Testimony of George Lewis Dickinson.)

Q. Where do you reside?

A. 277 Athens Street, San Francisco.

Q. And your business or occupation?

A. Minister.

Q. And where were you born?

A. In San Francisco.

Q. And have you any relatives? A. Yes.

Q. Who are they?

A. My mother and father, George A. Dickinson and Mrs. Jean Dickinson. I have an aunt, Mrs. Dorothy Dickinson, and uncle, Mr. Verne Dickinson.

Q. Your immediate family I had in mind. What is the business or occupation of your father?

A. He is a construction worker, digging machinery maintenance.

Q. And he is engaged in business here?

A. Yes.

Q. How long has he been engaged in business here?

A. Not engaged in business. He is employed.

Q. Employed by whom?

A. The Charles Harney Company.

Q. And how long has he been so employed? [79]

A. Oh, about ten years. I wouldn't know for sure, though.

Q. Is he here today? A. No, he is not.

Q. When did you last see him?

A. I saw him this morning.

Q. Being 21 years old, how do you account for

(Testimony of George Lewis Dickinson.)

your father not being here and taking an interest in your case? I am a father myself. That is the only reason I mention that.

A. Well, he said he had to go to work today. It was a question of financial necessity.

Q. Well, does he approve this method that you are pursuing?

A. He does not agree with the doctrine of Jehovah's Witnesses but he thinks that we are right in our stand for exemption as ministers.

Q. You discussed that with him many times?

A. Yes. And he will even back up the fact that I told him, after I came from the appeal board—I mean the appearance——

Q. Did you talk about the possibility of the Court of necessity having to send you to the penitentiary? A. Yes.

Q. And what did he think about that?

A. Well, he didn't take it too seriously.

Q. You are not taking it too seriously?

A. Well, yes, certainly.

Q. Why doesn't your father take it [80] seriously?

A. Well, I don't suppose he thought there would be any obligation on him, what happened to me.

Q. Well, maybe not, I don't know. Maybe with the speed that we are engaged in today, maybe I am kind of somewhat behind the times, I guess. You went to school here in San Francisco?

A. Yes, sir.

Q. What school did you go to?

(Testimony of George Lewis Dickinson.)

A. Oh, I went to several of the lower schools, James Denman Junior High School out in the Excelsior District, and the Samuel Gompers Trade and High School, 22nd and Barlett Street, where I received excellent education in radio.

Q. You graduated from grammar school?

A. Yes, and also from high school.

Q. What high school?

A. Samuel Gompers Trade and High School. Then I went to Junior College for a year and a half.

Q. Where?

A. Junior College, San Francisco Junior College.

Q. Where is that located?

A. Phelan Avenue, near Ocean Avenue.

Q. Now then, you got out of school what year, from Samuel Gompers School?

A. Four years ago.

Q. What did you first do after getting out of school? [81]

A. After I got out of Gompers I went to Junior College for a year and a half.

Q. After you got out of Junior College?

A. Then I immediately worked for the Navy.

Q. In what capacity?

A. As a radio mechanic helper.

Q. What line?

A. Well, we were doing repair work on some old equipment that would have otherwise been wasted.

Q. How long did you work there?

(Testimony of George Lewis Dickinson.)

A. About a year.

Q. Am I correct, that you were earning $11.00 a day when you quit? A. Yes.

Q. How many hours did you have to work for that? A. Forty hours a week.

Q. While you were working there were you living at home? A. Yes.

Q. You are not living at home now?

A. Yes, I have been staying with them since I had to leave my assignment in Coalinga.

Q. Oh, since you came back?

A. Well, I had to come back for the induction notice and then after I was arrested I was told that my assignment would be out of the district, and I wanted to be near the courts so that I could take care of any business that came up, so I [82] have been staying with my parents in San Francisco for the last three months.

Q. Well, you said you were renting a room some place. Where was that?

A. That was in Coalinga while I was there.

Q. You didn't rent any room here in San Francisco? A. No.

Q. You live with your parents? A. Yes.

Q. And who is at home with your father now?

A. Now?

Q. Your father and mother and who else?

A. My brother.

Q. How old is your brother?

A. He is eleven. He is sitting there in the front row in the blue suit.

(Testimony of George Lewis Dickinson.)

Q. I had in mind sending him back to school today but I—I don't allow young men of his age to loiter around court rooms—but I didn't know and I didn't want to do anything that—but since he can go back to school tomorrow I guess there is no harm done. This is no place for eleven-year-old boys. I have never allowed them to. Since you mentioned it, I just want you to go away knowing that. Now, then, you left your work there when—to fix that date as near as you can?

A. About a week before my notice of induction, I would say, [83] the 10th of July.

Q. 1950? A. 1951.

Q. The 10th of July?

A. Yes. I left Coalinga because of the notice of the draft board sent to me.

Q. Now, your employment at Hunters Point.

A. You mean at the Naval Shipyard?

Q. Yes. A. I can't tell you the exact day.

Q. Well, approximately, the month is sufficient.

A. It was in the summer of '49.

Q. The summer of '49? A. Yes.

Q. In July, August?

A. I would say somewhere in there.

Q. What prompted you to leave your work there? A. Huh?

Q. What prompted you to leave your work there?

A. Well, my conscience was bothering me for working there at the same time having conscientious objections to such things and it was so for quite a

(Testimony of George Lewis Dickinson.)

while, but then an examination was coming up, that I could have passed and made a journeyman's rating, but I did not take the examination and so I was notified that I would be displaced in my job, and I had been [84] pretty good at the job, so the superintendent told me I could switch to another department and stay there. I won a prize for contributing toward—my inventive streak—so I told him I would rather not work in a shipyard any longer and left the job.

Q. What did you tell him as to why you were leaving?

A. Well, I think he knew I was a Bible student but I didn't go into detail. I just told him I'd rather not work there any more.

Q. You didn't tell him?

A. No. My family knew why. That's all.

Q. And then you left and what did you do?

A. Then I stayed with some friends.

Q. Where?

A. On Fell Street in San Francisco.

Q. You mean you left home? A. Yes.

Q. That was in '40? A. Yes.

Q. Why did you leave home?

A. Well, so that I could devote myself to the ministry and study and not be distracted.

Q. Were you distracted at home?

A. Yes. My father argues a great deal about the Bible.

Q. Is that what you call distraction? [85]

A. Well, your form of arguing means to con-

(Testimony of George Lewis Dickinson.)

sider the right or wrong of the matter in evidence, but his argument is different.

Q. You can answer for yourself without arguing.

A. No, your form of argumentation, when you say argument, immediately you think of arguing—it means——

Q. I say with your father.

A. My father argues a little louder than [85-A] that. It's a match. It's not really a logical type of reasoning. Rather than be distracted I wanted to be some place where I could put my—better surroundings for studying and preaching, and that is what I did. I moved to this other place because there was a good atmosphere there.

Q. This was in '49? A. '49.

Q. You were how old then?

A. Well, I would be 19.

Q. You think at 19 you knew more than your father?

A. Well, my father knows a great deal more than I but because he might have more knowledge than I have does not mean he is right in all things. The point where I disagreed with him was not on the morals of the matter but on the scriptures. He does not believe in the Bible at all. He is what you call an atheist. He thinks it's a waste of time to try to serve God. If a majority of the American people will disagree with you because the majority of people go to churches now.

Q. Well, young man, since it has been clearly my duty to sentence you, I am not going further

with you. You are too smart for your own good. You have just outsmarted yourself as many a young man has that comes into this court from day to day. Some of those, possibly your friends here, had occasion to have a laugh. It wouldn't be well for them to have me seeing them laugh. They would leave this court knowing this [66] is not a laughing matter. If anybody wants to idle his time and come here and think this is a laughing matter, I will give them occasion to change his mind.

You understand it is clearly my duty to sentence you? Are you ready for sentence?

A. Yes, sir.

The Court: Step down.

Anything further you wish to say, counsel?

Mr. Covington: No, your Honor. I have nothing further to say except that I would add this, that in this type of case it has been held that the offense does not involve moral turpitude and you do not have before you a criminal type of an individual. On the contrary you have a minister of the gospel, affiliated with a dissension group, an unpopular group, and one against whom there has been manifested great prejudice in certain sectors of the nation and certain communities, and that is exactly as it was in the case of the Lord Jesus Christ and his apostles. They were unorthodox. They were unpopular. They were hated. They were despised. And they were not considered to be ministers.

The Court: Have you thought that I am here hating you?

Mr. Covington: No, I don't suggest that. I am

merely saying that that is the fact that they have had to contend with in respect to men in this organization I am mentioning now.

The Court: We are dwelling now on [87] sentence.

Mr. Covington: I realize that.

The Court: Is there any inference drawn about hatred here?

Mr. Covington: I don't know that.

The Court: Or prejudice?

Mr. Covington: I don't——

The Court: I have checked that because I have seen too much of the weaknesses of the human family to be prejudiced against anyone.

Mr. Covington: Well, your Honor, I didn't suggest that. I am merely saying that I am demonstrating a fact that you do not have this type of a case and in the facts in this case a criminal to deal with in the sense of moral turpitude.

The Court: I accept that statement. There is no doubt about that at all.

Mr. Covington: And, therefore, to sentence this young man to prison will not, in my judgment, do any good to the Selective Service prosecutions.

The Court: What would you have the Court do?

Mr. Covington: I would have the Court do this, put the man on probation and let him continue in the ministry, because he is at the very least a conscientious objector and under the present law, the law existed at that time, there was no obligation upon conscientious objectors——

The Court: Too many young men die in this

very day and this very hour to meet a problem of this kind in this manner. [88] He had a fair trial. He has spent and exhausted his remedies clean up to the present, and for this court to consider probation would be simply a mockery of justice.

Mr. Covington: Well, your Honor, you have asked me for my statement, and I have given it to your Honor.

The Court: I am trying to humbly answer you. I have no quarrel with you. You are here to do everything you can for this unfortunate young man. Don't misunderstand me. I have no feeling against either you or—which is your duty to do, I may add—or this young man.

Mr. Covington: Well, with that, your Honor, I realize that the time has been reached for sentence, and I have merely expressed what is on my mind and in my heart sincerely about this matter.

The Court: What about these other young men that have been sentenced by all these courts heretofore?

Mr. Karesh: Well, I don't wish to—I know your Honor doesn't wish to set a pattern in the cases.

The Court: But I have tried to keep in mind equal justice to all these unfortunate defendants.

Mr. Karesh: Your Honor has given on one occasion, I think where a man has refused to go in the service, as distinguished from Richard Contino, who was at the time of judgment willing to go in and received six months—your Honor may remem-

ber that—with reference to men who have refused, your [89] Honor has given—in one case involving a boy from up in Santa Rosa—I think you may remember that case—the boy that appeared to have been influenced by his father—I think you may remember that—your Honor gave that boy two years. All others have been given three years, and in two cases, Judge Harris, one case, and Judge Murphy in another case, have given five years, Judge Goodman gave two years, the rest were given three years. We have nothing to say about the sentence, whatever your Honor wishes to sentence is, of course, agreeable with us. We do oppose probation if the defendant is unwilling to comply with the draft act.

The Court: There is nothing I can say that would induce you to consider changing your mind in doing your duty?

The Defendant: My duty would be first of all to live up to God.

The Court: I have in mind, when I say doing your duty, going in the service. Would you comply with the law?

The Defendant: In this case my conscience is greater than the law. I don't want to be defying the law but I have gone as far as possible to please the law.

The Court: I will give you two years in the penitentiary with the hope that you will think it over in the quiet of your confinement and change your mind, for if you don't when you come out you will get two more years or maybe ten the next time,

I don't know. The sentence of the court and the judgment of [90] law to be confined in the penitentiary for a period of two years to be designated by the Attorney General or his legal representative.

Mr. Covington: May it please your Honor, I am taking an appeal in the time and the manner that is required by law, and the appeal will be prosecuted in good faith by me as counsel for this defendant. I intend to urge in the appellate court substantial questions of law that would justify admission to bail. Under the rules of criminal procedure I am authorized to request the court to grant bail so that in the event a substantial question is raised or in the event this court's decision is upset by the appellate court this man will not have spent his time satisfying the law that may be changed by the appellate court. I respectfully submit that the decision that has been rendered in this court, in my judgment, is in conflict with the case of Hull versus Stuit, I called your Honor's attention—I believe—and because of that belief based on the facts, I say that constitutes a substantial question and would justify bail. In addition to that I urge that the failure of the draft board to reduce to writing the extensive oral testimony that was given brings the decision of this court into conflict with the decisions of the Third Circuit Court of Appeals in two cases where that point was involved, first, U. S. versus Zieber, and second, U. S. versus Stiles.

The U. S. District Judge in the case of U. S. versus Darben, [91] at Pittsburgh, Pennsylvania, entered a judgment of acquittal on the facts almost

identical to this in respect to the failure of the draft board to reduce to writing the questions.

——— (Further discussion and authorities.)

The Court: Bail is denied.

Mr. Karesh: Ask the defendant be remanded.

The Court: Have you anything further you wish to say?

The Defendant: No, sir.

The Court: All right, that is all. [91-A]

[Endorsed]: Filed November 15, 1951.

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein:

Indictment.
Minutes of Arraignment.
Minutes of Plea.
Waiver of Jury Trial.
Affidavit of Defendant.
Affidavit of Hayden C. Covington.
Minutes of October 5, 1951.

Order Denying Motion for Issuance of Subpoena Duces Tecum.

Minutes of October 8, 1951.

Judgment and Commitment.

Notice of appeal.

Reporter's Transcript (original and four copies).

Plaintiff's Exhibits 1 to 25.

Defendant's Exhibits A to D.

In Witness Whereof I have hereunto set my hand and affixed the seal of said District Court this 15th day of November, 1951.

[Seal] C. W. CALBREATH,
Clerk.

By /s/ C. M. TAYLOR,
Deputy Clerk.

[Endorsed]: No. 13165. United States Court of Appeals for the Ninth Circuit. George Lewis Dickinson, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed November 15, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 13165

GEORGE LEWIS DICKINSON,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

ORDER

Upon consideration of the application of George Lewis Dickinson for bail pending appeal,

It Is Ordered that said appellant be enlarged upon the posting of bail in the sum of $2,500.00 cash or bond conditioned as required by law, to be approved by the District Court for the Northern District of California, Southern Division, and filed with the Clerk of that Court.

/s/ WILLIAM HEALY,

/s/ WM. E. ORR,

/s/ WALTER L. POPE,
United States Circuit Judges.

[Endorsed]: Filed December 19, 1951.

In the United States Court of Appeals
for the Ninth Circuit

No. 13165

GEORGE LEWIS DICKINSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS RELIED ON

Upon the appeal the appellant will rely upon the following points:

I.

The trial judge committed error in not granting the motion for judgment of acquittal made at the close of all the evidence.

II.

The trial judge committed error in rendering a judgment against the appellant and failing to acquit him.

III.

The trial judge committed error in failing to hold that the local board denied appellant his rights secured by the Act and Regulations, by failing to reduce to writing oral evidence given by the appellant upon the occasion of his personal appearance.

IV.

The trial court court committed reversible error in failing to hold that the local board violated the

appellant's rights to procedural due process by failing to reduce to writing the oral evidence given by him upon the occasion of his personal appearance.

V.

The trial court committed reversible error in failing to hold that the draft board did not have any basis in fact for the denial of the claim made by the appellant for exemption as a minister of religion.

VI.

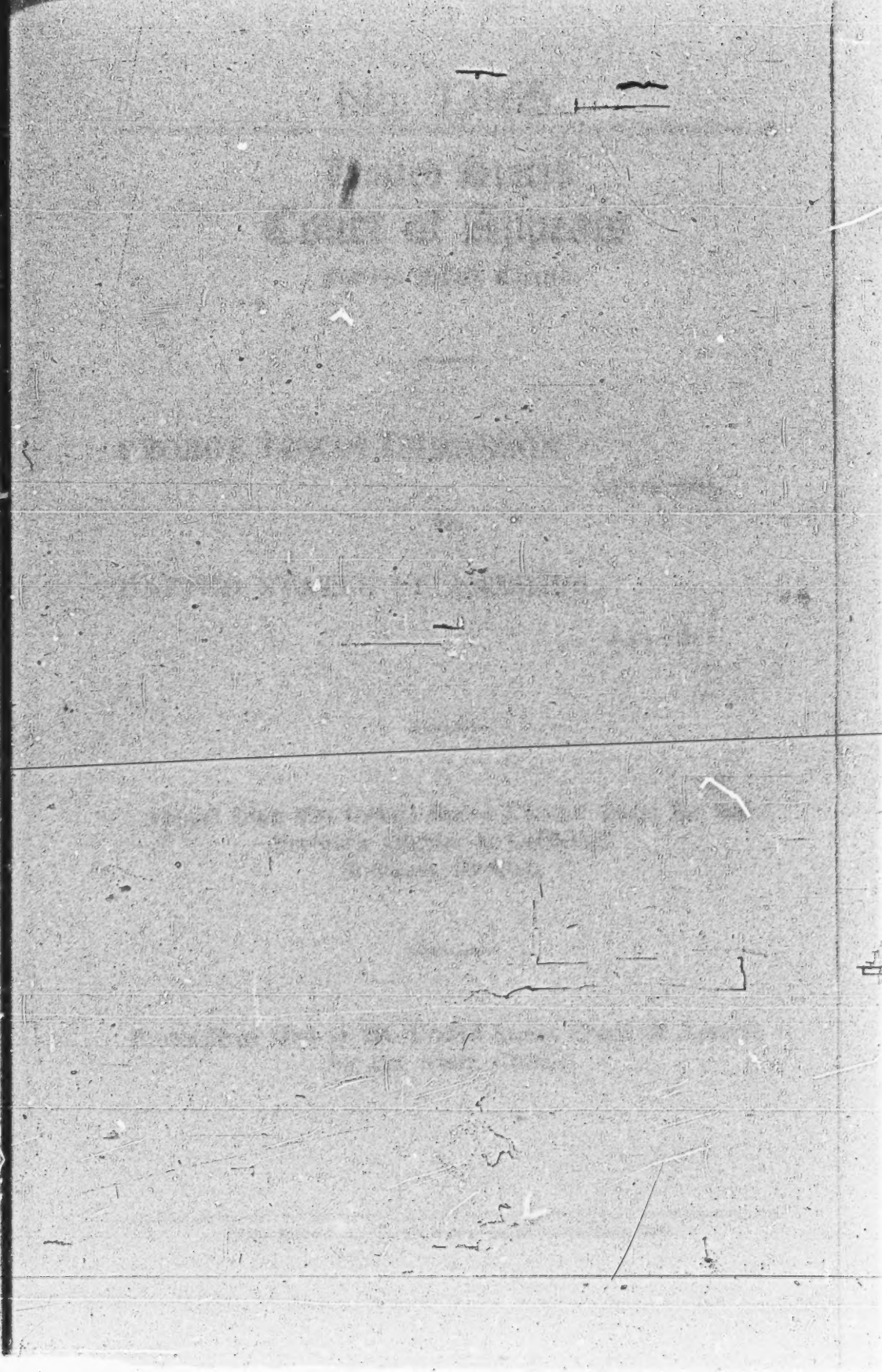
The trial court committed reversible error in failing to hold that the Act and Regulations, as construed and applied in this case, deprived the appellant of his constitutional rights guaranteed to him by the Fifth and Sixth Amendments to the United States Constitution, in that he was convicted without the opportunity of being confronted with the members of the Presidential appeal board that finally classified him.

Wherefore the appellant prays that the Clerk file the above statement of points as required by the Rules.

Respectfully submitted,

/s/ HAYDEN C. COVINGTON,
Attorney for Appellant.

[Endorsed]: Filed February 5, 1952.



No. 13165

United States
Court of Appeals
For the Ninth Circuit

GEORGE LEWIS DICKINSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Northern District of California Southern Division.

Proceedings Had in the United States Court of Appeals for the Ninth Circuit

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Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

United States Court of Appeals
for the Ninth Circuit

[Title of Cause.]

Excerpt from Proceedings of Friday, November 14, 1952.

Before: Healy, Bone and Pope,
Circuit Judges.

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. Hayden C. Covington, counsel for appellants, and by Mr. Joseph Karesh, Assistant United States Attorney, counsel for appellee, and submitted to the court for consideration and decision.

United States Court of Appeals
for the Ninth Circuit

[Title of Cause.]

Excerpt from Proceedings of Monday, March 9, 1953.

Before: Healy, Bone and Pope,
Circuit Judges.

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT

Ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion rendered.

United States Court of Appeals
for the Ninth Circuit

No. 13,165

GEORGE LEWIS DICKINSON,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Mar. 9, 1953

Appeal from the United States District Court for the Northern District of California, Southern Division.

Before: Healy, Bone and Pope,
Circuit Judges.

Pope, Circuit Judge.

OPINION

This is an appeal from a judgment of conviction after trial without a jury upon an indictment charging a refusal to submit to induction and be inducted into the armed forces of the United States in violation of §12 of the Selective Service Act of 1948, Title 50 USCA War App. §462 (a).

The appellant, a resident of San Francisco, registered with Local Board No. 37 in that City, and thereafter filed his classification questionnaire on December 10, 1948. He there stated that he was a minister of religion of the Jehovah's Witnesses and had been such since July 1, 1947, although he

had not been formally ordained. In response to the question as to the job he was now working at he replied: "I am a minister and support myself by doing radio work at night." Describing the kind of work he did in his present job, he said: "Test tubes, repair radar, interrogator responder equipment." He stated that his employer was the United States Navy at the San Francisco naval shipyard. Included in his file in the office of the local board was an additional statement on a separate paper which was apparently filed with the questionnaire. In this he stated that he was prepared to show that as his customary vocation he preached and taught the principles of a religious organization of which he was a member; "and that I am not a person who irregularly or incidentally preaches and teaches the principles of such organization as a regular minister." He stated that he conducted two meetings a week, each one lasting one hour; that he spent time preparing for these meetings, and several hours each week contacting the public and teaching and preaching to interested people. He said that the work which he had described in his questionnaire is done on the swing shift "allowing me the time in the Lord's service." Attached to this statement were certificates purporting to be signed by three individuals reciting that they knew the appellant, that he performed duties as a minister, and that he preached regularly the doctrines of the Watchtower Bible and Tract Society.

The questionnaire also stated that he worked an average of 40 hours a week at his radio job for

which he was paid $11.36 per day. He asked classification in class IV-D as a minister of religion. On July 31, 1950, the local board placed him in class I-A. He complained about this and requested a personal appearance before the local board, which he had on September 7, 1950. Following this personal appearance, the board placed in his file the following purported summary of what he stated on that occasion:

"9/7/50

Dickinson

Public Bldg. where he preaches.

Has not been ordained.

Devotes his full time to the work of preaching.

Support himself through this work.

Jehovah's witness."

At the trial the appellant testified at length as to what transpired on the occasion of his appearance before the board. He said that the chairman asked him what education he had for the ministry, to which he replied that he had studied the Bible and had delved into other text books of Jehovah's Witnesses with respect to the history of the Bible, the history of Christianity, and related subjects; that he had been given a course on how to prepare and write sermons. After describing at length this training, he said he explained to the board that since his questionnaire was filed, he had given up the job which he then had as a radio technician and had taken up the ministry as his principal vocation; that he had been officially ordained in

April, 1949, and was enrolled by the headquarters of Jehovah's Witnesses as a full-time pioneer minister in August, 1949. He said he told the board that as a "fulltime pioneer minister" he devoted 100 hours per month to the work of getting acquainted with people at their doors, leaving Bible literature with them and calling back upon the same persons, and that his work included offering Watchtower magazines to people on the streets. He also stated that he told the Board that in January, 1950, he was assigned to be the overseer of a congregation of people in Coalinga, California, and that he displayed to them the letter making this assignment, along with other similar letters giving him instructions about his work. He said he explained that at Coalinga Jehovah's Witnesses maintained a hall in which meetings were held three and sometimes four times a week, and it was his duty to preach at these meetings and that he delivered the discourses for most of them. He told the board that his missionary responsibility in his position as a pioneer minister extended to an area of 5400 square miles.

He also told the local board in response to their inquiry that he was paid no salary by Jehovah's Witnesses but that he supported himself as a radio man; that he made about $35 a month doing that kind of work and worked about five hours a week at it. He testified that the board was skeptical about his ability to live on $35.00 a month, but that he explained to them he could since his apartment cost him only $15 a month, he did his own cooking and often was invited to eat out.

He submitted at the time of this personal appearance an affidavit of one C. David Easter which recited that the affiant was an ordained minister of the Watchtower Bible and Tract Society of San Francisco; that he knew that appellant was officially in charge of the missionary work of that organization in a 5400 square miles territory with headquarters at Coalinga, California; that previously appellant had worked with affiant in San Francisco devoting his full time to the ministry, and that appellant had been enrolled "as a full time pioneer minister" by national headquarters as of August 1, 1949.

Following this September 7 appearance before it, the board upon review of the information it then had, classified the appellant in class I-A—available for military service,—and gave him notice. He was ordered to report for a physical examination, was found acceptable, and appealed to the Board of Appeal, where he was again classified in Class I-A on February 19, 1951. He then wrote to the National Director of the Selective Service System requesting that his classification be appealed from the appeal board to the National Appeal Board, and on April 10, 1951, his request was granted and the appeal was taken. A review was had by the National Appeal Board and on June 5, 1951, the members of that Board unanimously voted to place appellant in Class I-A.[1] He was ordered to report

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[1]The questionnaire which appellant filed disclosed that he had first signed the section claiming conscientious objection to war and then scratched out

for induction on July 16, 1951, and did so report but on the following day he refused to submit to induction or be inducted and his indictment and conviction followed.

It is argued that appellant was justified in refusing to submit to induction because the order for his induction was illegal and void for two reasons. It is said that the local board failed to reduce to writing the additional information which he gave them on the occasion of his personal appearance, that this failure was in violation of the applicable selective service regulations, and that it operated to deny him procedural due process to which he was entitled. The other contention is that there was no basis in fact for the boards' denial of appellant's claim for exemption as a minister of religion, and that the action in placing him in the I-A classification was so arbitrary, capricious and without basis in fact, that it must be held to have been in excess of the boards' jurisdiction.

The regulations which were in force pursuant to the provisions of the Selective Service Act of 1948, provided that a registrant should have an opportunity to appear in person before the members of

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his signature. Following the action of the National Appeal board appellant obtained and filed a conscientious objector form with the local board. On July 12, 1951, the board reviewed the file and the conscientious objector form and refused to reopen the case. No attempt was made to take any further appeal with respect to the denial of his conscientious objector claim, and appellant does not upon this appeal raise any question with respect thereto.

the local board; that at such appearance he might discuss his classification and indicate how he thought he should be classified and why; and that he might present any additional information which he then had, after which the board was charged with considering the new information and with classifying him again. The regulation further provided, with respect to the further information which the registrant might present, that "such information shall be in writing, or, if oral, shall be summarized in writing and, in either event, shall be placed in the registrant's files."[2]

It will be recalled that the information furnished on this occasion was partly in writing and partly oral. The written information was the affidavit of C. David Easter. The only summarization of the

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[2]Code of Federal Regulations, 1949 Ed., Title 32, Ch. XVI, Part 1624, §1624.2(b): "At any such appearance, the registrant may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which he believes the local board has overlooked or to which he believes it has not given sufficient weight. The registrant may present such further information as he believes will assist the local board in determining his proper classification. Such information shall be in writing, or, if oral, shall be summarized in writing and, in either event, shall be placed in the registrant's file. The information furnished should be as concise as possible under the circumstances. The member or members of the local board before whom the registrant appears may impose such limitations upon the time which the registrant may have for his appearance as they deem necessary."

oral statement of appellant was that which we have noted above indicating the day by the figures "9/7/50." The argument is that compliance with the regulations' provision for the placing in the file of a written summary of the additional information furnished by the registrant, is of importance because if such a summary is missing from his file the fact that this additional information has been given is not available to the appeal board when it considers an appeal and again classifies the registrant. Such has been held in United States vs. Zieber, 3d cir., 161 F. 2d 90, 92, and in Niznik vs. United States, 6 cir., 173 F. 2d 328, 332. In each of these cases the court held that it was not encumbent upon the local board to make any written summary or to do anything to the registrant's file except insofar as the registrant at his personal appearance furnished "further information," that is to say, information not otherwise available to the board in the registrant's files.[3] Both courts held that whether the registrant furnished this "further information" and whether the same was placed in

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[3] "If the oral evidence introduced by a registrant on his personal appearance before the board is the same as the written evidence contained in his file, it is difficult to see how it could be said that the record on appeal, which consists of written evidence and which is composed of the registrant's complete file, does not contain the evidence presented before the local board, and how a registrant could, in such a case, be deprived of a fair hearing on his appeal through failure of the local board to summarize the same information that already appears in written form in his file. It would seem that in this case,

the cover sheet or file was a question of fact to be determined by the trier of facts at the trial.[4]

It will be noted that all the regulation requires is that the oral information shall be "summarized" in writing. This of course means substantially less than a verbatim report of what the registrant said. The word "summarize" is defined as "to tell in, or reduce to, a summary; present briefly." "Summary" is defined as "an abstract, abridgement or compendium; esp. one recapitulating the sum or substance of a preceding discourse; as, he then proceeded to give a brief summary of the points he had covered."

It should be noted also that the clerk of the

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appellants would have no cause of complaining that the local board did not summarize in writing the information which they orally presented if that same evidence appeared in extenso in writing in appellants' complete file which was reviewed by the appeal board." Niznik vs. United States, supra, p. 33.

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[4] "While it clearly appears to us from the record that appellants introduced no 'further' oral information, which was not summarized in writing by the board on their hearing, in addition to what already appeared in writing in their files, it is to be remarked that in cases in which this becomes an issue, and where there may be any doubt on the point, undoubtedly the trial court would submit the question to the jury to determine, as a matter of fact, whether a registrant did offer such further oral information in addition to what already appeared in his file; and where there is a conflict in the testimony or evidence on the point, the question must be submitted to the jury for determination." Niznik vs. United States, supra, p. 334.

board who testified at the trial was interrogated with respect to the board's purported summary which we have previously quoted. She testified as follows: "Q. I show you Government Exhibit Number 4 and ask you to tell us by whom that was prepared? A. That was prepared by me. Q. Upon the occasion of the personal appearance? A. That's right. Q. And what is it? A. You mean I should explain? Q. Yes. I would like to hear from you. A. Well, these are the minutes of the personal appearance. Q. That's the memorandum that you made at the direction of the Board? A. That's right. Q. Something showing what took place, is that right? A. That's right." The substance of this testimony is that the exhibit there referred to, which is the summary, showed what actually took place. It might therefore well be held that the court properly found as a fact, on the basis of the clerk's testimony thus quoted, that what was there written reflected what was said at the time of appellant's appearance before the board. We think, however, that whether the statement was or was not "summarized," it cannot be said that the appellant was denied any substantial right, for the reason that the matter of his classification was subsequently considered by both the regular appeal board and the national appeal board.

The record shows that prior to the final consideration of the registrant's appeals, his file contained statements in writing which set forth all of the information which appellant claims to have given to the local board at the time of his personal appearance. On September 21, 1950, the appellant sent to the local board a lengthy statement in writing,

largely argumentative but repeating his claim that he was a minister of a recognized religious organization who preached as his regular occupation and not merely occasionally or incidentally. This statement was available as well as the writen statement of affiant Easter when the appeal board classified him on February 19, 1951. On February 28, 1951, in connection with his request for appeal before the national appeal board, appellant addressed a letter to General Hershey, Director of National Selective Service, in which he set out at length his claim as to his occupation, with a review of his local board record including a very complete statement of the additional information he says was furnished to the local board at the time of his personal appearance.

In those cases which have dealt with a failure of the local board to summarize the registrant's oral evidence, that failure has been considered important because of the resultant unavailability of those facts to the appeal board. Such is not the situation here. As this court pointed out in Cramer v. France, 148 F. 2d 801, 805, when dealing with similar regulations, "the action of the board of appeals completely supersedes the action of the local board in classifying appellant, although the classification is the same." Such, we think, must be said of the action of the National Selective Service Appeal Board in this case.

In the case last cited there was a total failure of the local board to make or file any summary of registrant's oral evidence. It appeared, however,

that the appellant himself had filed a long statement of the facts he claimed to warrant his classification and on which he was orally examined by the local board. This court said: "Though there is no summary of this examination by the Board, the question is whether appellant has shown, as required by section 627.13 of the regulations, that there are any facts stated in the oral examination 'which do not appear in the written information in the file' of appellant. Appellant has shown no such facts and hence has not shown that any summary was required of the local board." We followed that case in Tyrell v. United States, 200 F. 2d 8 Cf. Knox v. United States, 9 cir., 200 F. 2d 398, 401. We think that an application of the principles expressed in the Cramer and Tyrell cases, and in the Niznik case, supra, requires us to hold that in the circumstances here the appellant is not in a position to claim prejudice even if a summary were wholly lacking. But in view of the quoted testimony of the board's clerk, and in the light of the presence of the Easter affidavit, the court was justified in finding as a fact that the summary as filed met the requirements of the regulation.

We now proceed to a discussion of the contention that the draft boards had no basis in fact for the denial of the appellant's claim for exemption as a minister of religion and that their action in classifying him in Class I-A was arbitrary and capricious.

The present Act, like the Act construed in the decisions to which we shall presently refer, provides that the decisions of the local board "shall be final,

except where an appeal is authorized and is taken in accordance with such rules and regulations as the President may prescribe." Title 50, App. §460 (b) (3). We must note at the outset that in dealing with this and the other provisions of the earlier Act, the Supreme Court said in Estep v. United States, 327 U.S. 114, 122: "The provision making the decisions of the local boards 'final' means to us that Congress chose not to give administrative action under this Act the customary scope of judicial review which obtains under other statutes. It means that the courts are not to weigh the evidence to determine whether the classification made by the local boards was justified. The decisions of the local boards made in conformity with the regulations are final even though they may be erroneous. The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant." Thereafter, in Cox v. United States, 332 U.S. 442, 453, it was said: "Although we held in Estep that Congress did not intend to cut off all judicial review of a selective service order, petitioners have full protection by having the issue submitted to the trial judge and the reviewing courts to determine whether there was any substantial basis for the classification order. When the judge determines that there was a basis in fact to support classification, the issue need not and should not be submitted to the jury. Perhaps a court or jury would reach a different result from the evidence but as the determination of classification is for selective service, its order is reviewable 'only

if there is no basis in fact for the classification.' Estep v. United States, supra, 122. Consequently when a court finds a basis in the file for the board's action that action is conclusive."[5] And in the case cited with approval in the Estep case, Goff v. United States, 4 cir., 135 F. 2d 610, 612, the court said: "[T]his does not mean that the court in a criminal proceeding may review the action of the board. That action is to be taken as final, nothwithstanding errors of fact or law, so long as the board's jurisdiction is not transcended and its action is not so arbitrary and unreasonable as to amount to a denial of constitutional right."

The inquiry before the district court, and here, is not whether the court would reach a different result from the evidence which was before the draft board. Though the board's decision may be thought to be erroneous, it is not void unless there is no basis in fact for the classification. When we place

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[5]Counsel for appellant questions the soundness of this case arguing that the opinion of Mr. Justice Reed from which this quotation is taken, was that of four justices only, while four members of the court dissented and Mr. Justice Frankfurter merely concurred in the result. We think it is fair to assume that Mr. Justice Frankfurter's attitude was the same as that expressed by him in the first portion of his concurring opinion in the Estep case, in which he expressed the view that the word "final" in the section providing that the decision of the local board should be final, was even more "final" and less subject to judicial review than the majority of the court then held. We think that the separate concurrence of Mr. Justice Frankfurter can give no comfort to appellant.

ourselves in the position of the draft board and consider that which confronted it, we find at once that it may well have had some reasonable doubts as to the status of this appellant. At the outset he put the board on notice that in his language the word "minister" meant something quite different from the ordinary conception of that term. At the trial he testified that he told the board that every member of Jehovah's Witnesses is a minister and entitled to exemption as such. This is evidently a standard assertion of members of this sect, for the courts have had frequent occasion to allude to it. See the cases cited in Martin v. United States, 4 Cir., 190 F. 2d 775, 777.[6] He also testified that he told the local board at his personal appearance that he was an

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[6]In Rase v. United States, 129 F. 2d 204, 209, the court referred to this matter as follows: "If we understand the appellant's argument, every member of his sect is a minister of religion and so entitled to exemption. No differentiation is to be recognized between shepherd and flock or between pastor and congregants. Followed to its logical conclusion, this would mean that all of the members of any religious group which imposes upon its adherents an obligation to teach and preach its beliefs or to make converts, are exempted under the Selective Service Act without regard to whether such activity constitutes their sole or principal vocation. It is inconceivable that it was the intention of the Congress to incorporate in the Act an exemption so broad and all-embracing. The statutory exemption must be applied in consonance with the clearly apparent purpose of the Congress, and not in response to the interpretation placed upon it by particular religious groups or their adherents."

ordained minister of religion.[7] But here again the appellant disclosed that to a Jehovah's Witness "ordination" has a special meaning. Referring to his conversation with the chairman of the board during his personal appearance, he testified: "I explained to him that unlike the organizations that he may have been familiar with, to Jehovah's Witnesses ordination is in the ceremony of baptism. It is not—baptism is not, to one of the Jehovah's Witnesses, a mere profession of faith, but it is his commission or ordination—the words are synonymous—to go forth and preach to others and teach the things that He Himself cherishes so much." Such an approach to the board required that it give appellant's claims rather careful scrutiny. Here was appellant, saying in substance: when a Jehovah's Witness is baptized as such he is ordained, and since every Jehovah's Witness is a minister of religion, the moment he is baptized he is an ordained

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[7] §16 of the Act defines this term as follows: "(g) (1) The term 'duly ordained minister of religion' means a person who has been ordained, in accordance with the ceremonial, ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization." 50 USCA App. §466 (g) (1).

minister of religion. Such an exposition of what constitutes an ordained minister of religion could call for nothing but skepticism.

Furthermore, we think that the draft board might reasonably weigh the statements made by the appellant by another standard which courts have approved, namely, that if weaker and less satisfactory evidence is produced by one who might have furnished stronger and more satisfactory proof, that which he presents should be viewed with distrust. Southern Pac. Co. v. Libbey, 9 cir., 199 F. 2d 341, 346, note 6. It must have seemed strange to the local board that the only documentary evidence of appellant's capacity as a minister which he brought forward was the affidavit of C. David Easter who described himself as a duly ordained minister working in a certain section of San Francisco.[8] The appellant obviously belonged to an organized religious society which in the nature of the case must have had some governing official body, corresponding to a synod, bishopric, or convention. An interesting inquiry for the board was why did not this gov-

[8]The letter which appellant says he produced for the inspection of the board, as the letter which appointed him a minister, was marked and offered as an exhibit, but not admitted on the ground he had not left it with the board. It is apparently a form letter, printed on both sides of a paper bearing the letterhead of Watchtower Bible and Tract Society. The only signature is that Society's name, printed in script. Appellant's name before the salutation "Dear fellow Witness," appears to have been placed there by an addressograph.

erning body come forward with a credible certificate as to appellant's standing as a minister? We know judicially that as a part of the administration of the 1940 Act and during the second world war, in order to resolve the confusion which resulted from the claim that all Jehovah's Witnesses were ministers of religion authoritative lists were obtained from the heads of that society and furnished to the draft boards indicating which members of this group were recognized by the sect or organization as regular or ordained ministers.[9] While those lists were not available under the present Act, we cannot assume that if this applicant was what he claimed to be he could not secure from the appropriate head or heads of his sect or organization similar evidence of his standing.

A minister of religion within the meaning of the Act does not include one who merely casts himself in that role. He must either be "a duly ordained minister of religion," or a "regular minister of religion." The definition of the latter term includes the statement that he must be one "who is recognized by such church, sect, or organization as a regular minister."[10] We think that the board was justified in being dissatisfied with the character of the showing which the appellant undertook to make

[9]Such lists are referred to in the Cox case, supra, at p. 450.

[10]Sec. 16. When used in this title— . . . (g) . . . (2) The term "regular minister of religion" means one who as his customary vocation

that he was "recognized by such church, sect, or organization, as a regular minister," and in view of the appellant's unconventional notion of what constitutes ordination, the board was justified in refusing to accept his claim that he was an "ordained" minister of religion, as it was made clear to them that appellant did not use that term in its ordinary sense.

The provision of the regulations for a personal appearance of the registrant before the board serves the purpose not only of permitting the registrant to have his say, but of permitting the board to have a look at the registrant and to observe his manner, his appearance, and his demeanor. The great advantage which trial courts have in evaluating the testimony of witnesses through this opportunity for observation is constantly emphasized by appellate courts. This draft board had a similar advantage which neither we nor the district court may disregard. Thus at the time he was making this statement he was not yet 21 years of age. He was then asserting that more than a year previously and at a time when he was 19 years of age, he had become a full time, ordained recognized minister of religion. We cannot say that his looks and manner were not such as to emphasize this immaturity and the suggestion of absurdity in this claim.

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preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister. Tit. 50, App. §466 (g) (2).

The local board knew that when appellant made out his original questionnaire he was regularly employed at the navy yard; they knew that after they had classified him in Class I-A he stated that he had given up his job with the navy and had then become a full-time minister of religion. To a conscientious board, such claimed changes of circumstances following a I-A classification would require an inquiry whether they were real or feigned merely to improve his chances of proving his claim.[11] If he left the navy, was he still working as a radio repairman, and fully supporting himself thereby? As he had no salary or other income from the Jehovah's Witnesses he told the board that he supported himself by working part time as a radio repair man and that from this source he earned on an average $35 per month. It is apparent from appellant's own testimony in the court below that the members of the draft board were not inclined to believe this statement that this is all he earned, or that he could live on that amount.[12]

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[11] "As he made claim of conscientious objector classification only after he was reclassified I-A from IV-F and still later claimed ministerial exemption, the board was justified in deciding from the available facts that Cox had not established his ministerial status." Cox v. United States, supra, 451.

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[12] During his cross-examination upon this phase of the case he testified: "Q. And were you dressed just as nicely as you are now? A. Yes." Of course the trial court saw how this young man was dressed, and so did the board.

Even if we were of the opinion that the finding of the local board was clearly erroneous, and that it should have classified appellant as a minister of religion, we cannot on that basis alone hold the action of the draft board to be illegal, and the same limitations apply to the district court. In view of the circumstances to which we have here alluded, it cannot be said that the board's action was so arbitrary and capricious, so wanting in substantial basis, that the board was acting without jurisdiction. Surely a part of the board's duty, and a part of its jurisdiction, involved using its common sense in deciding whether such a claim as this was worthy of belief.

We cannot subscribe to any proposition that a draft board must give complete credence to all of the claims of such a registrant. The board had the same right to evaluate the testimony of a witness before it as has a trial court. Of that it was recently stated in Dyer v. MacDougall, —— F. 2d ——, 2 cir., (Dec. 31, 1952): "Moreover, such evidence may satisfy the tribunal, not only that the witness' testimony is not true, but that the truth is the opposite of his story; for the denial of one, who has a motive to deny, may be uttered with such hesitation, discomfort, arrogance or defiance, as to give assurance that he is fabricating, and that, if he is, there is no alternative but to assume the truth of what he denies." We think that it cannot be said that there

was not a "basis in fact to support the classification" made by the local board.[13]

This case presents no circumstance disclosing any bias, prejudice or unreasonable conduct on the part of the draft board. The appellant testified at the trial that at his appearance before the board he was treated reasonably and with respect, and he made no claim of failure to obtain a complete hearing there.

We have found that without regard to whether the decision of the local board may or may not have been erroneous there was yet substantial basis for its action.

The judgment must be affirmed.

[Endorsed]: Opinion. Filed Mar. 9, 1953. Paul P. O'Brien, Clerk.

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[13] "When the judge determines that there was a basis in fact to support classification, the issue need not and should not be submitted to the jury." Cox v. United States, supra, p. 453. "The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant." Estep v. United States, supra, p. 122.

United States Court of Appeals
for the Ninth Circuit

No. 13165

GEORGE LEWIS DICKINSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

JUDGMENT

Appeal from the United States District Court for the Northern District of California, Southern Division.

This Cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division, and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered March 9, 1953.

United States Court of Appeals
for the Ninth Circuit

CERTIFICATE OF CLERK, U. S. COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Court of Appeals for the Ninth Circuit, do hereby certify the foregoing 144 pages, numbered from and including 1 to and including 144, to be a full, true and correct copy of the entire record together with original exhibits transmitted herewith, of the above-entitled case in the said Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appears of record in my office.

Attest my hand and the seal of the said the United States Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 27th day of March, 1953.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1952

No. 777

GEORGE LEWIS DICKINSON, Petitioner,

vs.

UNITED STATES OF AMERICA

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—Filed March 8, 1953

Upon consideration of the application of counsel for petitioner,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 8, 1953.

Wm. O. Douglas, Associate Justice of the Supreme Court of the United States.

Dated this 28th day of March, 1953.

[File endorsement omitted.]

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed June 15, 1953

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.